Title 18

ZONING[1]

Chapters:

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1. For statutory provisions regarding planning and zoning in code cities, see chapter 35A.63 RCW.

Code reviser's note: During the May 1995 supplement, references to "city treasurer" throughout the DMMC were changed to "finance director"; references to "city engineer" were changed to "public works director"; references to "planning department" were changed to "community development department"; references to "planning director" were changed to "community development director"; references to "planning commission" were changed to "planning agency."

Chapter 18.02

GENERAL PROVISIONS

Sections

18.02.010 County code adopted by reference.

The regulations and provisions of Resolution No. 25789[1], approved April 29, 1963, of King County, state of Washington, three copies of which are on file in the office of the city clerk, and as further amended and modified in this title, are adopted as an ordinance of the city, and such regulations and provisions, as so modified, are incorporated in this title, and shall be in full force and effect within the corporate limits of the city. [Ord. 175 § 1(part), 1964.]

18.02.020 Purpose.

An official land use control for Des Moines is adopted and established to serve the public health, safety, and general welfare and to provide the economic and social and aesthetic advantages resulting from an orderly planned use of land resources and represents one means of carrying out the general purposes set forth and defined in chapter 18.84 DMMC. [Ord. 175 § 1(24.02.010), 1964.]

18.02.030 Title.

This title shall be known as the "zoning code." [Ord. 175 § 1(24.02.020), 1964.]

1. Codified in Title 21 KCC.

Chapter 18.04

DEFINITIONS

Sections

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18.04.000 Use of words and phrases.

As used in this title, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings. [Ord. 1400 § 2(1), 2007: Ord. 1378 § 2(1), 2006.]

18.04.005 Abut (abutting, abuts).

"Abut" means to touch at one end or side, to lie adjacent to, be next to, or to border upon. Abut is synonymous with adjacent and adjoining. [Ord. 1104 § 11, 1994.]

18.04.010 Accessory.

"Accessory" means a use, a building or structure, part of a building or other structure, which is subordinate to and the use of which is incidental to that of the main building, structure, or use on the same lot, including a private garage. If an accessory building is attached to the main building by a common wall or roof, such accessory building shall be considered a part of the main building. [Ord. 175 § 1(24.04.010), 1964.]

18.04.015 Accessory living quarters (ALQ).

"Accessory living quarters (ALQ)" provide complete independent living facilities including provisions for living, sleeping, cooking, and sanitation within a detached structure or within part of the primary dwelling unit. [Ord. 1378 § 10, 2006: Ord. 175 § 1(24.04.015), 1964.]

18.04.015.1 Adjacent.

"Adjacent" means to abut. [Ord. 1104 § 12, 1994.]

18.04.016 Adult entertainment facilities.

"Adult entertainment facilities" means adult cabarets, adult retail uses, adult massage parlors, adult sauna parlors, adult bathhouses, and adult motion picture theaters, which are further more specifically defined in DMMC 18.04.016.1 through 18.04.016.6. [Ord. 1288 § 1(part), 2001: Ord. 655 § 1(part), 1986.]

18.04.016.1 Adult cabaret.

"Adult cabaret" means a commercial establishment which presents go-go dancers,

strippers, male or female impersonators, or similar entertainers, and which excludes any person by virtue of minimum age from all or any portion of the premises. [Ord. 1288 § 1(part), 2001: Ord. 655 § 1(part), 1986. Formerly 18.04.016.2]

18.04.016.2 Adult retail use.

"Adult retail use" means a retail establishment which, for money or any other form of consideration, either:

(1) Has as one of its principal purposes to sell, exchange, rent, loan, trade, transfer, and/or provide for viewing or use, off the premises, any adult oriented merchandise; or

(2) Provides, as its substantial stock in trade, for the sale, exchange, rental, loan, trade, transfer, and/or provide for viewing or use, off the premises, any adult oriented merchandise. [Ord. 1288 § 1(part), 2001: Ord. 655 § 1(part), 1986. Formerly 18.04.016.5]

18.04.016.3 Adult massage parlor.

"Adult massage parlor" means a commercial establishment in which massage or other touching of the human body is provided for a fee and which excludes any person by virtue of minimum age from all or any portion of the pre-

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mises in which such service is provided. [Ord. 1288 § 1(part), 2001: Ord. 655 § 1(part), 1986. Formerly 18.04.016.6]

18.04.016.4 Adult sauna parlor.

"Adult sauna parlor" means a commercial sauna parlor which excludes any person by virtue of minimum age from all or any portion of the premises. [Ord. 1288 § 1(part), 2001: Ord. 655 § 1(part), 1986. Formerly 18.04.016.7]

18.04.016.5 Adult bathhouse.

"Adult bathhouse" means a commercial bathhouse which excludes any person by virtue of minimum age from all or any portion of the premises. [Ord. 1288 § 1(part), 2001: Ord. 655 § 1(part), 1986. Formerly 18.04.016.8]

18.04.016.6 Adult motion picture theater.

"Adult motion picture theater" means an enclosed building used for presenting motion picture films or video tapes or any other visual media distinguished or characterized by an emphasis on, matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this zoning code, for observation by patrons therein. [Ord. 1288 § 1(part), 2001: Ord. 659 § 1, 1986. Formerly 18.04.017]

18.04.017 Adult oriented merchandise.

"Adult oriented merchandise" means any goods, products, commodities, or other wares, including, but not limited to, videos, CD-Roms, DVDs, magazines, books, pamphlets, posters, cards, periodicals or nonclothing novelties, which depict, describe or simulate specified anatomical areas or specified sexual activities. [Ord. 1288 § 1(part), 2001: Ord. 655 § 1(part), 1986.]

18.04.018 Adult family home.

"Adult family home" means a regular family abode of a person or persons who are providing personal care, room, and board to more than one but not more than four adults who are not related by blood or marriage to the person or persons providing the services; except that a maximum of six adults may be permitted if the Department of Social and Health Services determines that the home is of adequate size and that the home and the provider are capable of meeting standards and qualifications as provided for in chapter 70.128 RCW as presently constituted or as may be subsequently amended or recodified. For the purpose of this section, an "adult" is a person who has attained the age of 18 years. [Ord. 1288 § 3, 2001: Ord. 1106 § 1, 1994. Formerly 18.04.016.3]

18.04.020 Airport, heliport, or aircraft landing field.

"Airport," "heliport," or "aircraft landing field" means any runway, landing area, or other facility whether publicly or privately owned and operated, and which is designed, used, or intended to be used either by public carriers or by private aircraft for landing and taking off of aircraft, including all necessary taxiways, aircraft storage and tie-down areas, hangars, and other necessary buildings and open spaces, but not including manufacturing, servicing, or testing facilities located in the vicinity of any landing area associated with the manufacturing or testing of commercial or military aircraft or activities associated therewith. [Ord. 175 § 1(24.04.020), 1964.]

18.04.025 Alley.

"Alley" means a public thoroughfare or way which affords only a secondary means of access to abutting property. [Ord. 175 § 1(24.04.025), 1964.]

18.04.030 Amendment.

"Amendment" means a change in the wording, context, or substance of this title, adoption of a zoning map hereunder, a change in the zone boundaries upon zoning maps adopted hereunder, or the adoption of a planned unit development. [Ord. 175 § 1(24.04.030), 1964.]

18.04.034 Amusement uses.

"Amusement uses" means area, structure, and/or business operated for profit, devoted to machines, tables, boards, or other devices designed to be operated or played on the premises by one or more individuals upon the payment of or by the insertion of a coin or

token and shall be construed to include pinball machines, claw machines, cranes, video machines, bowling machines, and all other devices of like kind, nature, or purpose. [Ord. 697 § 12(C), 1987: Ord. 696 § 2(C), 1987.]

18.04.035 Animal, small.

Repealed by Ord. 532. [Ord. 175 § 1(24.04.035), 1964.]

18.04.037 Antenna.

"Antenna" means all attachments to the mast (supporting structure), excluding any rotor, which support or are electrically or mechanically related to the elements which transmit or receive electromagnetic radiation. [Ord. 445 § 1(C), 1978.]

18.04.038 Antenna system.

"Antenna system" means the mast and all attached antennas of only a commonly used and commercially available type, excluding parabolic antennas such as microwave dishes, which are used to transmit or receive any portion of the radio spectrum. [Ord. 445 § 1(A), 1978.]

18.04.040 Antiques and antique shop.

"Antiques" means any articles which, because of age, rarity, or historical significance, have a monetary value greater than the original value, or which have an age recognized by the United States Government as entitling the article to an import duty less than that prescribed for contemporary merchandise. A store or shop selling only such articles or offering them for sale shall be considered as an antique shop or store, and not considered as a dealership handling used or secondhand merchandise. [Ord. 175 § 1(24.04.040), 1964.]

18.04.045 Apartment.

"Apartment" means a room, or a suite of two or more rooms in a multiple dwelling or in any other building not a single-family dwelling or a duplex dwelling occupied or suitable for occupancy as a dwelling unit for one family. [Ord. 1197 § 20, 1997; Ord. 175 § 1(24.04.045), 1964.]

18.04.050 Apartment hotel.

"Apartment hotel" means a building containing dwelling units and six or more hotel rooms or suites. [Ord. 175 § 1(24.04.050), 1964.]

18.04.055 Apartment house.

"Apartment house" means a building or a portion of a building, designed for occupancy by three or more families living separately from each other and containing three or more dwelling units. [Ord. 175 § 1(24.04.055), 1964.]

18.04.056 Appeal, closed record.

As defined by RCW 36.70B.020(1), a "closed record appeal" means an appeal of a land use action following an open record public hearing on a proposed land use action. Such an appeal is on the record established during the open record pre-decision public hearing with no new evidence or information allowed. During a closed record appeal, only appeal argument is allowed. [Ord. 1174 § 81, 1996.]

18.04.056.1 Appeal, open record.

See "Public hearing." [Ord. 1174 § 82, 1996.]

18.04.057 Aquifer.

"Aquifer" means a consolidated or unconsolidated ground water-bearing geologic formation or formations that contain enough saturated permeable material to yield significant quantities of water to wells. [Ord. 925 § 2, 1992.]

18.04.058 Area of special flood hazard.

"Area of special flood hazard" means the land within a flood plain subject to a one percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, and wetlands. [Ord. 925 § 3, 1992.]

18.04.060 Automobile, boat, and trailer sales area.

"Automobile, boat, and trailer sales area" means an open area, other than a street, used for the display, sale, or rental of new or used

automobiles, boats, or trailers, and where no repair work is done except minor incidental repair of automobiles, boats, or trailers to be displayed, sold, or rented on the premises. [Ord. 175 § 1(24.04.060), 1964.]

18.04.063 Motor vehicle repair operation.

"Motor vehicle repair operation" means a business involving the repair, overhaul, and/or reconditioning of motor vehicles as defined by Title 46 RCW. [Ord. 628 § 1, 1985.]

18.04.065 Automobile wrecker.

"Automobile wrecker" means any person, corporation, or enterprise engaged in automobile wrecking. [Ord. 175 § 1(24.04.065), 1964.]

18.04.070 Automobile wrecking.

"Automobile wrecking" means any dismantling or wrecking of motor vehicles or trailers, or the storage, sale, or dumping of dismantled or wrecked vehicles or their parts. [Ord. 175 § 1(24.04.070), 1964.]

18.04.075 Automobile wrecking yard.

"Automobile wrecking yard" means any premises devoted to automobile wrecking as the term is defined in DMMC 18.04.070. [Ord. 175 § 1(24.04.075), 1964.]

18.04.077 Barbed wire.

"Barbed wire" means twisted strands of fence wire armed with barbs or sharp points at regular intervals. [Ord. 1315 § 1(part), 2003.]

18.04.080 Basement.

"Basement" means that portion of a building between floor and ceiling which is partly below and partly above grade (as defined in DMMC 18.04.320), but so located that the vertical distance from grade to floor below is less than the vertical distance from grade to ceiling. A basement, when designed for or occupied for business or industrial purposes, or for dwelling purposes (recreational room or family room excepted) shall be considered a story. [Ord. 175 § 1(24.04.080), 1964.]

18.04.081 Bed and breakfast facilities.

"Bed and breakfast facilities" means accommodations and limited food service for travelers or transient guests in a single-family residence. The owner of the residence shall reside on the premises and the facility shall comply with all state regulations. There shall be not more than two lodging units or guest rooms in any residence. [Ord. 693 § 2, 1987.]

18.04.085 Block.

"Block" means all property abutting upon one side of a street between intersecting and intercepting streets, or between a street and railroad right-of-way, water way, terminus, or dead-end street, or city boundary line. An intercepting street shall determine only the boundary of the block on the side of the street which it intercepts. [Ord. 175 § 1(24.04.085), 1964.]

18.04.087 Bluff.

"Bluff" means a steep slope which abuts and rises from Puget Sound. Bluffs contain slopes predominantly in excess of 40 percent, although portions may be less than 40 percent. Bluffs occur in the area north of South 222nd Street and south of South 232nd Street. The toe of the bluff is the beach of Puget Sound. The top of a bluff is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the slope is either the line of vegetation separating the unvegetated slope from the vegetated uplands plateau or, when the bluff is vegetated, the point where the bluff slope diminishes to less than 15 percent. [Ord. 925 § 5, 1992: Ord. 853 § 3(a), 1990.]

18.04.090 Board.

"Board" means city council. [Ord. 175 §§ 1(24.04.090), 2(a), 1964.]

18.04.094 Boarding home.

"Boarding home" means any facility maintained for the express or implied purpose of providing board and domiciliary care to three or more aged persons not related by blood or marriage to the operator. In construing the meaning of the term "boarding home" refer-

ence will be made to RCW 18.20.020. [Ord. 887 § 1, 1991.]

18.04.095 Boarding house.

"Boarding house" means the same as lodging house, but where meals (with or without lodging) are provided for compensation for not more than 10 persons other than the family. Boarding house shall not include rest homes or convalescent homes. [Ord. 175 § 1(24.04.095), 1964.]

18.04.100 Boathouse, private.

"Private boathouse" means an accessory building, or portion of building, which provides shelter and enclosure for a boat or boats owned and operated only by the occupants of the premises. [Ord. 175 § 1(24.04.100), 1964.]

18.04.105 Boathouse, public.

"Public boathouse"' means a boathouse other than a private boathouse, used for the care, repair, or storage of boats, or where such boats are kept for remuneration, hire, or sale. [Ord. 175 § 1(24.04.105), 1964.]

18.04.107 Buffer.

"Buffer" means either: an area adjacent to hillsides which provides the margin of safety through protection of slope stability, attenuation of surface water flows and landslide, seismic, and erosion hazards reasonably necessary to minimize risk to the public from loss of life, well-being, or property damage resulting from natural disasters; or an area adjacent to a stream or wetland which is an integral part of the stream or wetland ecosystem, providing shade; input of organic debris and coarse sediments; room for variation in stream or wetland

boundaries; habitat for wildlife; impeding the volume and rate of runoff; reducing the amount of sediment, nutrients, and toxic materials entering the stream or wetland; and protection from harmful intrusion to protect the public from losses suffered when the functions and values of stream and wetland resources are degraded. [Ord. 853 § 3(b), 1990.]

18.04.110 Building.

"Building" means any structure having a roof, but excluding all forms of vehicles even though immobilized. When a use is required to be within a building, or where special authority granted pursuant to this title requires that a use shall be within an entirely enclosed building, then the term "building" means one so designed and constructed that all exterior walls of the structure shall be solid from the ground to the roof line, and shall contain no openings except for windows and doors which are designed so that they may be closed. [Ord. 175 § 1(24.04.110), 1964.]

18.04.115 Building department.

"Building department" means the city manager or his authorized representative. [Ord. 175 §§ 1(24.04.115), 2(b), 1964.]

18.04.120 Building height.

"Building height" means the vertical distance from the grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the height of the highest gable of a pitch or hip roof. [Ord. 564 § 1, 1983: Ord. 175 § 1(24.04.120), 1964.]

18.04.125 Building, main.

"Main building" means the principal building or other structure on a lot or building site designed or used to accommodate the primary use to which the premises are devoted. Where a permissible use involves more than one building or structure designed or used for the primary purpose, as in the case of group houses, each such permissible building or other structure on a lot or building site as defined by this title shall be construed as comprising a main building or structure. [Ord. 175 § 1(24.04.125), 1964.]

18.04.127 Building setback line.

"Building setback line" means a line beyond which the footprint or foundation of a building shall not extend. [Ord. 853 § 3(c), 1990.]

18.04.130 Building site.

"Building site" means a parcel of land assigned to a use, to a main building, or to a main building and its accessory buildings, together with all yards and open spaces required by this title, whether the area so devoted is comprised of one lot, a combination of lots, or combination of lots and fractions of lots. [Ord. 175 § 1(24.04.130), 1964.]

18.04.135 Bungalow court.

"Bungalow court" means a group of three or more detached one-story, one-family, or duplex dwellings located upon a single lot or building site, together with all open spaces required by this title. [Ord. 1197 § 21, 1997; Ord. 175 § 1(24.04.135), 1964.]

18.04.140 Business or commerce.

"Business" or "commerce" means the purchase, sale, offering for sale, or other transaction involving the handling or disposition of any article, service, substance, or commodity for livelihood or profit; or the management or occupancy of the office buildings, offices, recreational, or amusement enterprises; or the maintenance and use of buildings, offices, structures, or premises by professions and trades or persons rendering services. [Ord. 175 § 1(24.04.140), 1964.]

18.04.145 Camp, public.

"Public camp" means any area or tract of land used or designed to accommodate two or more camping parties, including cabins, tents, camping trailers, or other camping outfits. [Ord. 175 § 1(24.04.145), 1964.]

18.04.150 Category.

"Category" means a broad generic group of types of uses such as agriculture, residential, business, commercial, manufacturing, and others, and which are further refined into zones distinguished principally by the degree of

intensity of use. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.04.150), 1964.]

18.04.155 Cellar.

"Cellar" means that portion of a building between floor and ceiling which is wholly or partly below grade and so located that the vertical distance from the grade to the floor below is equal to or greater than the vertical distance from grade to the next ceiling above it. [Ord. 175 § 1(24.04.155), 1964.]

18.04.160 Cemetery.

"Cemetery" means land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundary of such cemetery. [Ord. 175 § 1(24.04.160), 1964.]

18.04.162 Channel bottom.

"Channel bottom" means the submerged portion of the stream cross-section which is totally an aquatic environment. The channel bottom may be seasonally dry. [Ord. 853 § 3(d), 1990.]

18.04.165 Church.

"Church" means an establishment, the principal purpose of which is religious worship and for which the principal building or other structure contains the sanctuary or principal place of worship, and including accessory uses in the main building or in separate buildings or structures, including Sunday school rooms and religious education classrooms, assembly rooms, kitchen, library room or reading room, recreation hall, a one-family dwelling unit and residences on site for nuns and clergy, but excluding facilities for training of religious orders. [Ord. 175 § 1(24.04.165), 1964.]

18.04.170 Classification.

"Classification" means a refined identification of uses which, either individually or as to type, are identified as possessing similar characteristics or performance standards and are permitted as compatible uses in a zone. A classification, as the term is employed in this title, includes provisions, conditions, and requirements related to the permissible location of permitted uses. [Ord. 175 § 1(24.04.170), 1964.]

18.04.172 Clearing.

"Clearing" means the destruction and removal of vegetation by burning, mechanical, or chemical methods. [Ord. 853 § 3(e), 1990.]

18.04.175 Club.

"Club" means an association of persons for some common purpose, but not including groups organized primarily to render a service which is customarily carried on as a business. [Ord. 175 § 1(24.04.175), 1964.]

18.04.177 Coastal Zone Atlas of Washington.

"Coastal Zone Atlas of Washington" means a document prepared by the Washington State Department of Ecology (publication No. DOE 77-21-6) to assist local governments in making land and water use decisions for the shoreline areas and marine aquatic areas under their jurisdiction. The document contains the following coastal surveys: geology, slope stability, flooding, sand and gravel resources, critical faunal and floral areas, coastal drift sector inventory, and land cover/land use. [Ord. 853 § 3(f), 1990.]

18.04.180 Combustible.

"Combustible" means any mixture, substance, or compound which is susceptible of spontaneous combustion, or which is flammable. [Ord. 175 § 1(24.04.180), 1964.]

18.04.183 Commercial and recreational shellfish areas.

"Commercial and recreational shellfish areas" means areas that include all public and private tidelands or bedlands suitable for shellfish harvest, including shellfish protection districts established pursuant to chapter 90.72 RCW. [Ord. 1400 § 2(2), 2007.]

18.04.185 Commission.

"Commission" means the city planning agency. [Ord. 767 § 1, 1988: Ord. 175 §§ 1(24.04.185), 2(c), 1964.]

18.04.187 Compensation.

"Compensation" means the replacement, enhancement, or creation of an undevelopable environmentally critical area equivalent in functions, values, and size to those being altered or lost from development. [Ord. 853 § 3(g), 1990.]

18.04.190 Conditional use.

"Conditional use" means a use permitted in one or more zones as defined by this title but which use because of characteristics peculiar to it, or because of size, technological processes, or type of equipment, or because of the exact location with reference to surroundings, streets, and existing improvements or demands upon public facilities, requires a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same zone or zones, and to assure that such use shall not be inimical to the public interest. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.04.190), 1964.]

18.04.195 Conditional use permit.

"Conditional use permit" means the documented evidence of authority granted by the board of adjustment to locate a conditional use at a particular location. [Ord. 175 § 1(24.04.195), 1964.]

18.04.200 Conforming building.

"Conforming building" means:

(1) In the residential zones, a building which is considered to be a residential building by the building code, and other buildings designed to accommodate uses permitted in these zones and which buildings also conform to the requirements of this title in the matter of use, height, yards, and area coverage, and which do not contain more than the number of dwelling units prescribed for the zone in which such buildings are located.

(2) In the commercial zones, a building which is considered under the building code as a building designed to accommodate uses permitted in the commercial zones. [Ord. 1237 § 4, 1999; Ord. 175 § 1(24.04.200), 1964.]

18.04.205 Conforming use.

"Conforming use" means an activity the nature and type of which is permitted in the zone in which the property on which it is established is located. [Ord. 175 § 1(24.04.205), 1964.]

18.04.206 Continuing care retirement community.

"Continuing care retirement community" means a facility that provides apartment type and/or cottage housing, residential services, and health care to people of retirement age. These facilities provide a full continuum of housing and care, from independent living through nursing care, in order to meet the aging person's growing need for supportive services and care. [Ord. 887 § 2, 1991.]

18.04.207 County.

All references to "King County" or "county" mean city of Des Moines or city. [Ord. 175 § 2(d), 1964.]

18.04.210 Court.

"Court" means any portion of the interior of a lot or building site which is fully or partially surrounded by buildings or other structures and which is not a required yard or open space. [Ord. 175 § 1(24.04.210), 1964.]

18.04.211 Creation (establishment), wetlands.

"Creation (establishment)" means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site where a wetland did not previously exist. "Establishment" results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species. [Ord. 1400 § 2(3), 2007.]

18.04.212 Critical aquifer recharge areas (CARAs).

"Critical aquifer recharge areas (CARAs)" mean those areas with a critical recharging effect on aquifers used for potable water, as defined by WAC 365-190-030(2). CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. Aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic matrix, infiltration, and depth to water as determined by the criteria established by the state Department of Ecology.

These areas include the following:

(1) Wellhead Protection Areas. Wellhead protection areas may be defined by the boundaries of the 10-year time of ground water travel or boundaries established using alternate criteria approved by the Washington State Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.

(2) Sole Source Aquifers. Sole source aquifers are areas that have been designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Water Drinking Act.

(3) Susceptible Ground Water Management Areas. Susceptible ground water management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to chapter 173-100 WAC.

(4) Special Protection Areas. Special protection areas are those areas defined by WAC 173-200-090.

(5) Moderately or Highly Vulnerable Aquifer Recharge Areas. Aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines.

(6) Moderately or Highly Susceptible Aquifer Recharge Areas. Aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the state Department of Ecology. [Ord. 1400 § 3, 2007: Ord. 925 § 6, 1992.]

18.04.215 Dairy.

"Dairy" means any premises where three or more cows, three or more goats, or any combination thereof are kept, milked, or maintained. [Ord. 175 § 1(24.04.215), 1964.]

18.04.216 Dangerous fence.

"Dangerous fence" means a fence which is designed to be able to or is likely to inflict injury or harm. The term includes, but is not limited to, fences constructed of or including barbed wire or razor wire. [Ord. 1315 § 1(part), 2003.]

18.04.217 Dangerous waste.

"Dangerous waste" means those wastes designated in WAC 173-303-070 through 173-303-103 as dangerous wastes. "Dangerous waste" also is any discarded, useless, unwanted, or abandoned substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such a quantity or concentration as to pose a substantial hazard or potential hazard to human health wildlife, or the environment because such wastes or constituents or combinations of such wastes have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties or are corrosive, explosive, flammable, or may generate pressure through decomposition or other means. Moderate risk waste is not a dangerous waste. [Ord. 757 § 1(part), 1988.]

18.04.218 Date of decision.

"Date of decision" means the date the final decision or determination is rendered or issued, unless specified otherwise by law. [Ord. 1174 § 83, 1996.]

18.04.220 Day care center.

"Day care center" means an agency which regularly provides care for a group of children for periods of less than 24 hours. [Ord. 1106 § 2, 1994: Ord. 806 § 1, 1989: Ord. 793 § 2, 1989.]

18.04.220.5 Developable area.

"Developable area" means the "site area" less the following areas:

(1) Areas within a project site that are required to be dedicated for public rights-of-way;

(2) Environmentally critical areas and their buffers to the extent they are required by the city to remain undeveloped;

(3) Areas required for storm water control facilities, including but not limited to retention/detention ponds/vaults, biofiltration swales and setbacks from such ponds and swales;

(4) Areas required by the city to be dedicated or reserved as on-site recreation areas;

(5) Other areas, excluding setbacks, required by the city to remain undeveloped. [Ord. 1400 § 2(4), 2007.]

18.04.221 Development activity.

"Development activity" means any work, condition, or activity which requires a permit or approval under Titles 11, 14, 16, or 18 DMMC or under chapter 2.22 DMMC. [Ord. 937 § 4, 1992.]

18.04.222 Development site.

"Development site" means the entire lot, series of lots, or parcels on which a development is located or is proposed to be located, including all contiguous undeveloped lots or parcels which are under common ownership with the developed lots on or subsequent to June 30, 1990. This definition only applies to chapter 18.86 DMMC. [Ord. 853 § 3(h), 1990.]

18.04.224 Drainage facility.

"Drainage facility" means the system of collecting, conveying, and storing surface and storm water runoff. Drainage facilities shall include but not be limited to all surface and storm water runoff conveyance and containment facilities including streams, pipelines, channels, ditches, wetlands, closed depressions, infiltration facilities, retention/detention facilities, erosion/sedimentation control facilities, and other drainage structures and appurtenances, both natural and manmade. [Ord. 853 § 3(i), 1990.]

18.04.225 Dump.

"Dump" means an open area devoted to the disposal of refuse, including incineration, reduction, or dumping of ashes, garbage, combustible or noncombustible refuse, but not including transfer stations. [Ord. 175 § 1(24.04.225), 1964.]

18.04.230 Dwelling.

"Dwelling" means a building designed exclusively for residential purposes, including one-family, duplex, townhouse, and multiple dwellings, which is constructed in accordance with the city buildings and construction code (Title 14 DMMC) as presently constituted or as may be subsequently amended, but not including hotels or motel units having no kitchens. [Ord. 1197 § 22, 1997; Ord. 658 § 1, 1986: Ord. 175 § 1(24.04.230), 1964.]

18.04.235 Dwellings, types of.

(1) "Group dwelling" means more than two separate buildings, each containing one or more dwelling units.

(2) "One-family dwelling" means a detached building designed exclusively for occupancy by one family and containing one dwelling unit.

(3) "Townhouse dwelling" means one dwelling unit on an internal lot within a townhouse development designed exclusively for occupancy by one family. A townhouse dwelling is located at an internal lot line and attached to one or more other townhouse dwellings. The first floor of a townhouse dwelling is at or near ground level. A townhouse dwelling occupies the building area from ground level to the roof with no townhouse dwelling located above or below another townhouse dwelling.

(4) "Duplex" means a building designed exclusively for occupancy by two families living independently of each other, and containing two dwelling units. Duplexes may contain units that are not at ground level.

(5) "Multiple dwelling" means a building designed exclusively for occupancy by three or more families living independently of each other, and containing three or more dwelling units. [Ord. 1197 § 1, 1997; Ord. 175 § 1(24.04.235), 1964.]

18.04.240 Dwelling unit.

"Dwelling unit" means one or more rooms designed for or occupied by one family for living or sleeping purposes and containing kitchen facilities for use solely by one family. All rooms comprising a dwelling unit shall have access through an interior door to other parts of the dwelling unit. A bachelor apartment constitutes a dwelling unit within the meaning of this title. [Ord. 175 § 1(24.04.240), 1964.]

18.04.245 Educational institution.

"Educational institution" means elementary schools, junior high schools, middle schools, high schools, junior colleges, community colleges, colleges, or universities, or other schools giving general academic instruction in the several branches of learning and study required by the education code[1] of the state. [Ord. 767 § 2, 1988: Ord. 175 § 1(24.04.245), 1964.]

18.04.246 Electric fence.

"Electric fence" means an above-ground wire fence that is designed to carry an electric current that will produce a mild shock when a person or animal comes into contact with the wire. [Ord. 1315 § 1(part), 2003.]

18.04.247 Emergency.

"Emergency" means a situation or condition as determined by the city council that requires prompt action in order to prevent or minimize adverse impacts upon public safety, health, and welfare. [Ord. 1174 § 84, 1996.]

1. Title 28 RCW.

18.04.249 Enhancement, wetlands.

"Enhancement" means the manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, floodwater retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities. [Ord. 1400 § 2(5), 2007.]

18.04.250 Entirely enclosed building or structure.

"Entirely enclosed building or structure" means a building or structure so designed and constructed that all exterior walls of the building or structure shall be solid from the ground to the roof line and containing no openings except for windows and doors which are so designed that they may be closed. [Ord. 175 § 1(24.04.250), 1964.]

18.04.252 Environmentally sensitive areas.

"Environmentally sensitive areas" means any of those areas of the city which are subject to natural hazards or those landform features which in their natural state carry, hold, or purify water; support unique, fragile, or valuable natural resources including fish, wildlife, and other organisms and their habitat; provide flood protection; provide shoreline stabilization; provide ground water recharge; maintain stream flow; stabilize slope and shoreline bluffs; stabilize soil; and control erosion. Environmentally sensitive areas include the following landform features: hillsides, wetlands, streams, areas of special flood hazard, critical aquifer recharge areas, fish and wildlife habitat conservation areas, and the protective buffers necessary to protect the public health, safety, and welfare, each as defined in this chapter. [Ord. 925 § 7, 1992: Ord. 853 § 3(j), 1990.]

18.04.255 Equipment, heavy duty.

"Heavy duty equipment" means high-capacity mechanical devices for moving earth or other materials, mobile power units, including, but not limited to, carryalls, graders, loading and unloading devices, cranes, drag lines, trench diggers, tractors, augers, caterpillars, concrete mixers and conveyors, harvesters, combines, or other major agricultural equipment and similar devices operated by mechanical power as distinguished from manpower. [Ord. 175 § 1(24.04.255), 1964.]

18.04.260 Erected.

"Erected" means the construction of any building or structure, or the structural alteration of a building or structure the result of which would be to change the exterior walls or roof or to increase the square foot floor area of the interior of the building or structure. [Ord. 175 § 1(24.04.260), 1964.]

18.04.262 Erosion hazard areas.

"Erosion hazard areas" means at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard. Erosion hazard areas are also those areas impacted by shore land and/or stream bank erosion and those areas within a river's channel migration zone. [Ord. 1400 § 2(6), 2007: Ord. 853 § 3(k), 1990.]

18.04.263 Essential public facilities.

"Essential public facilities" means public facilities that are typically difficult to site, such as airports, state education facilities, and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020. [Ord. 1378 § 2(2), 2006.]

18.04.265 Explosive.

"Explosive" means any mixture, substance, or compound having properties of such a character that alone, or in combination or contiguity with other substances or compounds, may decompose suddenly and generate sufficient heat, gas, or pressure to produce rapid flaming combustion or administer a destructive blow to surrounding objects. [Ord. 175 § 1(24.04.265), 1964.]

18.04.267 Extremely hazardous waste.

"Extremely hazardous waste" means those wastes identified in WAC 173-303-070 through 173-303-103 as extremely hazardous wastes. Extremely hazardous waste is also disposal of hazardous waste at any facility in such quantities that would pose a significant danger to man or the environment or any waste that persists in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic makeup of man or wildlife or is highly toxic to man or wildlife. [Ord. 757 § 1(part), 1988.]

18.04.270 Family.

"Family" means an individual, or two or more persons related by blood or marriage, or a group of not more than five persons who are not related by blood or marriage, excluding servants, living together in a dwelling unit. [Ord. 175 § 1(24.04.270), 1964.]

18.04.271 Family day care provider.

"Family day care provider" means a licensed day care provider who regularly provides day care for not more than 12 children in the provider's home in the family living quarters. [Ord. 1106 § 3, 1994.]

18.04.273 Federally designated endangered and threatened species.

"Federally designated endangered and threatened species" means those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be

consulted for current listing status. [Ord. 1400 § 2(7), 2007.]

18.04.275 Fence.

"Fence" means a masonry wall or a barrier composed of posts connected by boards, rails, panels, or wire for the purpose of enclosing space or separating parcels of land. The term "fence" does not include retaining walls. [Ord. 175 § 1(24.04.275), 1964.]

18.04.277 Fence, fully view-obscuring.

"Fully view-obscuring fence" means a continuous and substantially solid masonry or stone wall or a barrier composed of posts connected by boards, rails, panels, or wire that are spaced at regular or even intervals for the purpose of defining or enclosing space or separating parcels of land and that has an average of 80 percent or more solid surface that does not allow natural, open air space to be visible and pass through and which open visible space is evenly distributed across its full length and height. [Ord. 1543 § 1, 2012.]

18.04.279 Fence, partially view-obscuring.

"Partially view-obscuring fence" means a continuous masonry or stone wall or a barrier composed of posts connected by boards, rails, panels, or wire that are spaced at regular or even intervals for the purpose of defining or enclosing space or separating parcels of land and that has an average of less than 80 percent solid surface or other percentage specifically defined elsewhere in this title, that does not allow natural, open air space to be visible and pass through and which open visible space is evenly distributed across its full length and height. [Ord. 1543 § 2, 2012.]

18.04.280 Fire escape.

"Fire escape" means an auxiliary facility for emergency escape from a building as defined or designated by the building code. [Ord. 175 § 1(24.04.280), 1964.]

18.04.285 First permitted.

The term "first permitted" refers to the most restricted zone in which a particular use is indicated as a permissible use. [Ord. 175 § 1(24.04.285), 1964.]

18.04.287 Fish and wildlife habitat conservation areas.

"Fish and wildlife habitat conservation" means land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. Fish and wildlife habitat conservation areas include:

(1) Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;

(2) State priority habitats and areas associated with state priority species;

(3) Habitats and species of local importance;

(4) Commercial and recreational shellfish areas;

(5) Kelp and eelgrass beds identified by the Washington Department of Natural Resources;

(6) Herring and smelt spawning areas as outlined in chapter 220-110 WAC and the Puget Sound Environmental Atlas as presently constituted or as may be subsequently amended;

(7) Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

(8) Waters of the state as defined in Title 222 WAC;

(9) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and

(10) State natural area preserves and natural resource conservation areas as defined, established, and managed by the Washington State Department of Natural Resources; [and]

(11) Areas of rare plant species and high quality ecosystems as identified by the Washington State Department of Natural Resources through the Natural Heritage Program; and

(12) Land useful or essential for preserving connections between habitat blocks and open spaces as determined by the city manager or designee. [Ord. 1400 § 4, 2007: Ord. 925 § 8, 1992.]

18.04.290 Flammable.

"Flammable" means any mixture, substance, or compound which will emit a flammable vapor at a temperature at or below 300 degrees Fahrenheit when tested in a Tagliabue open cup tester; if a liquid, then one having a flash point below 200 degrees Fahrenheit and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at one 100 degrees Fahrenheit. [Ord. 175 § 1(24.04.290), 1964.]

18.04.295 Floor area.

"Floor area" means a total floor area within the walls of all buildings on a lot or building site, except for the spaces therein devoted to vents, shafts and light courts and except for the area devoted exclusively to loading and unloading facilities and to parking of motor vehicles. [Ord. 175 § 1(24.04.295), 1964.]

18.04.300 Foster home, 24-hour care.

A "24-hour foster care home" means a dwelling occupied by a family who, for compensation or otherwise, accepts and cares for not more than six children as full-time residents as a part of the family as defined in this chapter and which children are assigned by

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authorized public authorities. [Ord. 175 § 1(24.04.300), 1964.]

18.04.305 Foster family day care home.

Foster family day care home"means a residence licensed by authorized public authorities, to be used to care for not more than six children by the day, with or without compensation. A foster family day care home" may be considered to include a day nursery conducted on a half-day basis, when such home is licensed by authorized public authorities; provided, the number of children cared for at any time shall not exceed six. [Ord. 175 § 1(24.04.305), 1964.]

18.04.310 Garage, private.

Private garage" means an accessory building or an accessory portion of the main building, enclosed on not less than three sides and designed or used only for the shelter or storage of vehicles owned or operated only by the occupants of the main building or buildings. [Ord. 175 § 1(24.04.310), 1964.]

18.04.315 Garage, public.

Public garage"means a building, other than a private garage, used for the care, repair, or storage of automobiles, or where such vehicles are kept for remuneration, hire, or sale. [Ord. 175 § 1(24.04.315), 1964.]

18.04.317 Geologically hazardous areas (GHA).

Geologically hazardous areas (GHA)" means areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk, but also may increase the hazard to surrounding development and use. Areas susceptible to one or more of the following types of hazards shall be designated as a geologically hazardous area.

(1) Erosion hazard;

(2) Landslide hazard;

(3) Seismic hazard; and

(4) Other geological events including tsunamis, mass wasting, debris flows, rock falls, and differential settlement. [Ord. 1400 § 2(8), 2007.]

18.04.319 Group home facilities.

Group home facilities"means accommodations, meals, and care for not more than five ambulatory persons in a single-family residence. The owner of the residence shall reside on the premises and the facility shall comply with all state regulations, except a licensed adult family home is not a group home facility. [Ord. 1106 § 4, 1994: Ord. 693 § 1, 1987.]

18.04.320 Grade.

Grade"means the average of the finished ground level at the center of all exterior walls of a building. In case walls are parallel to and within five feet of a sidewalk, the sidewalk shall be considered the finished ground level. [Ord. 175 § 1(24.04.320), 1964.]

18.04.320.1 Grade, artificial.

Artificial grade"means a manmade grade created by means of earthen terraces, berms, fills, or the like, specifically for the purpose of gaining a height advantage or disguising the true height of a structure. [Ord. 925 § 4, 1992; Ord. 564 § 2, 1983. Formerly 18.04.321.]

18.04.320.15 Grade, highest sidewalk.

Highest sidewalk grade"means the highest elevation of the sidewalk parallel to the building frontage. [Ord. 1514 § 1, 2011.]

18.04.320.2 Grade, mean average sidewalk.

Mean average sidewalk grade"means the mathematical average of the highest and lowest elevations of the sidewalk parallel to the building frontage. Mean average sidewalk grade is a horizontal plane at a specific elevation. [Ord. 1120 § 2, 1995.]

18.04.320.3 Grade, mean average street frontage.

Mean average street frontage grade" means the mathematical average of the highest and lowest elevations of the public right-of-

way parallel to the building frontage. Mean average street frontage grade is a horizontal plane at a specific elevation. [Ord. 1120 § 3, 1995.]

18.04.320.4 Grade, median sidewalk.

"Median sidewalk grade" means the average elevation of a sidewalk, abutting a commercial street, as designed by the city, along the public street line; except that for the west side of Marine View Drive South, median sidewalk grade shall be defined as the average elevation of the alley extending mid-block between 7th Avenue South and Marine View Drive South. For properties lying between Marine View Drive South and 8th Avenue South, sidewalk grade shall be established at Marine View Drive grade elevations. [Ord. 697 § 12(D), 1987: Ord. 696 § 2(D), 1987. Formerly 18.04.320.3.]

18.04.320.7 Habitat of local importance.

"Habitat of local importance" means a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. Such areas may include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors, and areas of limited availability or high vulnerability to alteration, such as bluffs, talus, and wetlands. [Ord. 925 § 9, 1992.]

18.04.321.1 Hazardous substance.

"Hazardous substance" means any solid, liquid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any characteristics or criteria of hazardous waste as described in WAC 173-303-090, 173-303-101, 173-303-102, or 173-303-103. [Ord. 757 § 1(part), 1988.]

18.04.321.2 Hazardous waste.

"Hazardous waste" means any dangerous waste or extremely hazardous waste. Moderate risk waste is not a hazardous waste. [Ord. 757 § 1(part), 1988.]

18.04.321.3 Hillsides.

"Hillsides" means geological features of the landscape having slopes of 15 percent and greater. To differentiate between levels of hillside protection and the application of development standards, the city categorizes hillsides into four groups: hillsides of at least 15 percent but less than 25 percent; hillsides of at least 25 percent but less than 40 percent; hillsides of 40 percent slope and greater; and hillsides which are ravine sidewalls or bluffs. [Ord. 853 § 3(l), 1990.]

18.04.321.4 Historic Properties Survey: City of Des Moines.

"Historic Properties Survey: City of Des Moines" means the *Historic Properties Survey: City of Des Moines* as prepared on October 14, 1994 for the city of Des Moines. A copy of this survey is maintained on file in the office of the city clerk and in the office of the community development director and is available for public inspection. [Ord. 1124 § 6, 1995.]

18.04.322 Home occupation.

"Home occupation" means an occupation customarily incident to the use of the premises as a dwelling place and not one in which the use of the premises as a dwelling place is largely incidental to the occupation carried on; provided, such occupation is carried on by a member of the family residing within the dwelling place. [Ord. 295 § 1, 1971.]

18.04.325 Hospital.

"Hospital" means an institution specializing in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and licensed by state law to provide facilities and services in surgery, obstetrics, and general medical practice, as distinguished from treatment of mental and nervous disorders and alcoholics, but not excluding surgical and post-surgical treatment of mental cases. [Ord. 175 § 1(24.04.325), 1964.]

18.04.330 Hospital, mental (including hospital for treatment of alcoholics).

"Mental hospital" means an institution licensed by state agencies under the provisions of law to offer facilities, care and treatment for

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cases of mental and nervous disorders, and alcoholics. Establishments limiting services to juveniles below the age of five years, and establishments housing and caring for cases of cerebral palsy are not considered mental hospitals. [Ord. 175 § 1(24.04.330), 1964.]

18.04.335 Hospital or clinic, small animal.

"Small animal hospital or clinic" means an establishment in which veterinary medical services, clipping, bathing, and similar services are rendered to dogs, cats, and other small animals and domestic pets, but not including kennels. [Ord. 175 § 1(24.04.335), 1964.]

18.04.340 Hotel.

"Hotel" means a building in which there are six or more guest rooms where lodging with or without meals is provided for compensation, and where no provision is made for cooking in any individual room or suite, and in which building may be included one apartment for use of the resident manager, but shall not include jails, hospitals, asylums, sanitariums, orphanages, prisons, detention homes, and similar buildings where human beings are housed or detained under legal restraint. [Ord. 175 § 1(24.04.340), 1964.]

18.04.343 Intensity of land use.

The following definitions of "land use intensity" serve as the basis for establishing wetland buffers and development standards as codified in chapter 18.86 DMMC.

(1) "High intensity land use" means land uses which are associated with high levels of human disturbance or substantial habitat impacts including, but not limited to, medium- and high-density residential (more than one home per five acres), multifamily residential, and commercial and industrial land uses. The majority of land uses in Des Moines are considered "high intensity land use."

(2) "Moderate intensity land use" means land uses which are associated with moderate levels of human disturbance or substantial habitat impacts including, but not limited to, active recreation.

(3) "Low intensity land use" means land uses which are associated with low levels of human disturbance or low habitat impacts, including, but not limited to, passive recreation and open space land uses. [Ord. 1400 § 2(9), 2007.]

18.04.345 Junk dealer.

"Junk dealer" means and includes any person or enterprise having a fixed place of business in the city and engaged in conducting, managing, or carrying on the business, either wholesale or retail, of buying, selling, or otherwise dealing in any old rags, sacks, bottles, cans, papers, metal, rubber, or other articles commonly known as junk. [Ord. 175 § 1(24.04.345), 1964.]

18.04.350 Junkyard.

"Junkyard" means any premises devoted wholly or in part to the storage, buying, or selling, or otherwise handling or dealing in old rags, sacks, bottles, cans, papers, metal, rubber, or other articles commonly known as junk. [Ord. 175 § 1(24.04.350), 1964.]

18.04.355 Kennel.

"Kennel" means a place where four or more adult dogs or cats or any combination thereof are kept, whether by owners of the dogs and cats or by persons providing facilities and care, whether or not for compensation, but not including a small animal hospital or clinic. An adult dog or cat is one of either sex, altered or unaltered, that has reached the age of four months. [Ord. 175 § 1(24.04.355), 1964.]

18.04.356 King County Division of Parks and Recreation Play Area Design and Inspection Handbook.

"King County Division of Parks and Recreation Play Area Design and Inspection Handbook" is a document which contains guidelines for the design, construction, and inspection of recreational facilities and equipment, and is available for public inspection at the city department of community development. [Ord. 901 § 1, 1991.]

18.04.357 King County Sensitive Areas Map Folio.

"King County Sensitive Areas Map Folio" is a series of maps prepared by King County delineating Class III landslide hazard areas, Class III seismic hazard areas, erosion hazard areas, wetlands, anadromous fish-bearing waters, 100-year flood plains, and water types. A copy of this folio and unscreened maps of Area No. 5 are stored at the city department of community development. [Ord. 853 § 3(m), 1990.]

18.04.358 King County Wetland Inventory Notebook.

"King County Wetland Inventory Notebook" is a study conducted by the King County planning division in 1983 to inventory wetlands county-wide. The results of the wetlands inventory are summarized in a three-volume notebook. The notebook shows the location of wetlands mapped in the inventory and identifies each with a two-digit number which links it to collected data. Each wetland is assigned one of three wetland ratings determined by examining the scores of selected inventory tasks, specific data, and percentile rankings for various categories. [Ord. 853 § 3(n), 1990.]

18.04.360 Kitchen.

"Kitchen" means any room or rooms, or portion of a room or rooms, used or intended or designed to be used for cooking or the preparation of food. [Ord. 175 § 1(24.04.360), 1964.]

18.04.362 Landslide.

"Landslide" means an episodic downslope movement of a mass of soil or rock that includes but is not limited to rockfalls, slumps, mudflows, and earthflows. [Ord. 853 § 3(o), 1990.]

18.04.363 Landslide hazard areas.

"Landslide hazard areas" are those areas of the city potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Examples of these may include, but are not limited to, the following:

(1) Areas of historic failures, such as:

(a) Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;

(b) Those areas mapped by the Washington State Department of Ecology (Coastal Zone Atlas) or the Washington State Department of Natural Resources (slope stability mapping) as unstable (U or class 3), unstable old slides (UOS or class 4), or unstable recent slides (URS or class 5); or

(c) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Washington State Department of Natural Resources;

(2) Any area with a combination of:

(a) Slopes greater than 15 percent;

(b) Impermeable soils (usually silt and clay) frequently interbedded with granular permeable soils (usually sand and gravel); and

(c) Springs or ground water seepage;

(3) Any area which has shown movement during the Holocene epoch (from 10,000 years ago to present) or which is underlain by mass wastage debris of that age;

(4) Any area potentially unstable as a result of rapid stream incision, stream bank erosion, or undercutting by wave action;

(5) Any area designated as Class III landslide hazard area by the "Map Showing Relative Slope Stability in Part of West-Central King County, Washington, Map I-852-A, U.S., Geological Survey Miscellaneous Geologic Investigations" as presently constituted or as may be subsequently amended;

(6) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(7) Slopes having gradients steeper than 80 percent subject to rock fall during seismic shaking;

(8) Areas located in a canyon or on an active alluvial fan, presently or potentially

subject to inundation by debris flows or catastrophic flooding; and

(9) Any area with a slope of 40 percent or steeper and with a vertical relief of 10 or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least 10 feet of vertical relief. [Ord. 1400 § 5, 2007: Ord. 925 § 10, 1992: Ord. 853 § 3(p), 1990.]

18.04.365 Lighter uses (antithesis of heavier uses).

"Lighter uses" means uses involving performance standards having less detrimental effect upon surrounding properties and uses in the same or other zones than do uses first permitted in the next succeeding zone in terms of nuisance, hazard, generation of traffic and volume of traffic, both passenger and freight, and which uses make less demand upon public services such as electricity, gas, sewers, and streets. Where residential uses are involved, the term "lighter uses" means less permitted population density, possibly greater required yards, open spaces, and floor area within dwellings than is permitted or required in the next succeeding residential zone. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.04.365), 1964.]

18.04.370 Livestock.

"Livestock" means horses, bovine animals, sheep, goats, swine, reindeer, donkeys, and mules. [Ord. 175 § 1(24.04.370), 1964.]

18.04.375 Loading space.

"Loading space" means an on-site space or berth on the same lot or site with the buildings or use served, such space to serve for the temporary parking of a vehicle while loading or unloading merchandise, materials, or passengers. [Ord. 175 § 1(24.04.375), 1964.]

18.04.380 Lodging house.

"Lodging house" means a dwelling unit within which not more than five guest rooms are devoted to accommodating not more than 10 persons other than members of the family, but wherein meals for guests shall be neither provided nor permitted. A lodging house containing guest rooms numbering six or more shall be considered a hotel. [Ord. 175 § 1(24.04.380), 1964.]

18.04.385 Lot.

"Lot" means a building site that is described by reference to a recorded plat, by metes and bounds, or by section, township, and range which has direct legal access to a street or has access to a street over an easement approved by the city. [Ord. 175 § 1(24.04.385), 1964.]

18.04.390 Lot area and dimensions.

(1) "Lot area" means the total horizontal area within the boundary lines of a lot; provided, that the following areas are not included within the lot area and are not used to compute lot area or the area available for the satisfaction of any required yard:

(a) The area of a vehicular surface access easement or private street; and

(b) The area seaward of the ordinary high water mark from Puget Sound; and

(c) The area of any lake or pond, natural or artificial.

(2) "Lot depth" means the horizontal length of a straight line drawn from the midpoint of the lot front line and at right angles to such line to its intersection with a line parallel to the lot front line and passing through the midpoint of the lot rear line. In the case of a lot having a curved front line, the lot front line, for purposes of this section shall be deemed to be a line tangent to the curve and parallel to a straight line connecting the points of intersection of the lot side lines of the lot with the lot front line.

(3) "Lot width" means the horizontal distance between the lot side lines measured at right angles to the line comprising the depth of the lot at a point midway between the lot front line and the lot rear line. [Ord. 892 § 1, 1991: Ord. 567 § 1, 1983; Ord. 175 § 1(24.04.390), 1964.]

18.04.395 Lot lines.

(1) "Lot front line or front lot line" means, in the case of an interior lot, a line separating the lot from the street; in the case of a corner

lot and reverse corner lot, the lot front line shall be the line separating the narrowest street frontage of the lot from the street. In case of corner lots or reverse corner lots having equal street frontages, that property line the prolongation of which creates the front property line for the greatest number of interior lots in the same block shall be considered as the lot front line of such corner or reverse corner lot.

(2) "Lot perimeter line or perimeter lot line" means a lot line constituting the boundary of a planned unit development or townhouse development.

(3) "Lot rear line or rear lot line" means a lot line which is opposite and most distant from the lot front line. For the purpose of establishing the lot rear line of a triangular or trapezoidal lot, or of a lot the rear line of which is formed by two or more lines, the following shall apply:

(a) For a triangular or gore-shaped lot, a line 10 feet in length within the lot and farthest removed from the lot front line and at right angles to the line comprising the depth of such lot shall be used as the lot rear line;

(b) In the case of a trapezoidal lot the rear line of which is not parallel to the lot front line, the lot rear line shall be deemed to be a line at right angles to the line comprising the depth of such lot and drawn through a point bisecting the recorded lot rear line;

(c) In the case of a pentagonal lot the rear boundary of which includes an angle formed by two lines, such angles shall be employed for determining the lot rear line in the same manner as prescribed for a triangular lot.

(d) In no case shall the application of the above be interpreted as permitting a main building to locate closer than five feet to any property line.

(4) "Lot side line or side lot line" means any lot boundary line not a lot front line or a lot rear line. [Ord. 1197 § 2, 1997; Ord. 175 § 1(24.04.395), 1964.]

18.04.400 Lot types.

(1) "Corner lot" means a lot situated at the intersection of two or more streets, the street frontages of which lot form an angle not

greater than 128 degrees, and not less than 45 degrees.

(2) "Internal lot" means a lot within a planned unit development or townhouse development for the purpose of separate ownership of dwellings or for undivided ownership of common areas and facilities. An internal lot will also be a corner lot, interior lot, key lot, reverse corner lot, through lot, or transitional lot.

(3) "Interior lot" means a lot other than a corner lot or a reverse corner lot.

(4) "Key lot" means the first lot to the rear of a reverse corner lot and whether or not separated by an alley.

(5) "Reverse corner lot" means a corner lot the side street line of which is substantially a continuation of the lot front line of the lot upon which the rear of the corner lot abuts.

(6) "Through lot" means a lot having frontage on two streets, including a lot at the intersection of two streets when the street sides of such lot form an internal angle of less than 45 degrees. Corner lots and reverse corner lots as defined in this section are not through lots.

(6) "Transitional lot" means a residentially zoned lot a side line of which forms a common boundary with contiguous property zoned for either a higher density residential use or commercial or industrial uses. [Ord. 1197 § 3, 1997; Ord. 175 § 1(24.04.400), 1964.]

18.04.401 Lower bank.

"Lower bank" means the intermittently submerged portion of the stream cross-section which extends from the ordinary high water line to the water's edge during the summer low flow period. [Ord. 853 § 3(q), 1990.]

18.04.402 Mast (supporting structure).

"Mast (supporting structure)" means all parts of an antenna system used for the purpose of providing vertical support for the antenna. [Ord. 445 § 1(B), 1978.]

18.04.405 Medical-dental building or buildings.

"Medical-dental building or buildings" means a building or group of buildings designed for the use of, and occupied and used by, physicians and dentists and others engaged professionally in such healing arts for humans as are recognized by the laws of the state, including medical clinics; and including the installation and use of therapeutic equipment, x-ray equipment or laboratories, chemical, biochemical, and biological laboratories used as direct accessories to the medical-dental professions; dental laboratories including facilities for the making of dentures on prescription; pharmacies limited to the retail dispensing of pharmaceuticals and sick room supplies (but not room or orthopedic equipment or furniture); provided, there shall be no exterior display windows or signs pertaining to such accessory uses other than a directory sign. [Ord. 175 § 1(24.04.405), 1964.]

18.04.410 Medical-dental clinic.

"Medical-dental clinic" means an establishment for treatment of outpatients, and providing no overnight care for patients. [Ord. 175 § 1(24.04.410), 1964.]

18.04.410.1 Mitigation.

"Mitigation" means the use of any combination or all of the following actions:

(1) Avoiding impacts to environmentally sensitive areas by not taking a certain action or parts of an action;

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environmentally sensitive area;

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development proposal;

(5) Compensating for the impact by replacing or enhancing environmentally sensitive areas, or providing substitute resources; and

(6) Monitoring the impact and taking appropriate corrective measures. [Ord. 853 § 3(r), 1990.]

18.04.411 Mixed use.

"Mixed use" means one or more dwelling units and one or more enclosed commercial, business, or retail uses in a building in a commercial zone. [Ord. 1237 § 4, 1999; Ord. 1140 § 2, 1995: Ord. 1104 § 14, 1994: Ord. 617 § 1, 1985.]

18.04.413 Moderate risk waste.

"Moderate risk waste" means those wastes defined in WAC 173-303-040(55) as moderate risk wastes. This may include wastes that exhibit properties of hazardous waste but are exempt from regulation under chapter 70.105 RCW because the waste is generated in quantities below the threshold for regulation or any household waste which is generated from the disposal of substances identified by the Department of Ecology as hazardous household substances. [Ord. 757 § 1(part), 1988.]

18.04.414 Monitoring.

"Monitoring" means the collection and analysis of data by various methods for the purposes of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data, evaluating the impacts of development proposals on the biological, hydrologic, and geologic elements of such systems, and assessing the performance of mitigation measures. [Ord. 853 § 3(s), 1990.]

18.04.415 Motel.

"Motel" means a group of attached or detached buildings containing individual sleeping units where a majority of such units open individually and directly to the outside, and where a garage is attached to or a parking space is conveniently located to each unit, all for the temporary use by automobile tourists or transients, and the word shall include tourist courts, motor courts, automobile courts, automobile camps, and motor lodges. A unit in a motel having kitchen facilities shall constitute a dwelling unit and shall be subject to all of the provisions and requirements of this title governing dwelling units for the zone in which the establishment is located, but never less than the requirements of the heaviest multiple-dwelling zone. [Ord. 175 § 1(24.04.415), 1964.]

18.04.417 Native vegetation.

"Native vegetation" means plant species which are indigenous to the area in question. [Ord. 853 § 3(t), 1990.]

18.04.420 Nonconforming building.

"Nonconforming building" means a building, or portion thereof, which was lawfully erected or altered and maintained but which, because of the application of this title to it, no longer conforms to the regulations of the zone in which it is located as defined by this title. [Ord. 175 § 1(24.04.420), 1964.]

18.04.425 Nouconforming use.

"Nonconforming use" means a use which was lawfully established and maintained but which, because of the application of this title to it, no longer conforms to the use regulations of the zone in which it is located as defined by this title. [Ord. 175 § 1(24.04.425), 1964.]

18.04.425.5 North American Industrial Classification System.

"North American Industrial Classification System" means the 1997 Edition of the book North American Industrial Classification System as published by the United States Office of Management and Budget. A copy of this book is maintained on file in the office of the city clerk and in the office of the community development director and is available for public inspection. [Ord. 1267 § 14, 2000.]

18.04.426 Nursery school.

"Nursery school" means an agency, group, or individual which is engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day. [Ord. 793 § 3, 1989.]

18.04.426.1 Nursing home.

"Nursing home" means facilities for patients who are recovering from an illness, or receiving care for chronic conditions, mental or physical disabilities, terminal illness, alco-

hol or drug inpatient treatment. Care may include inpatient administration of medicine, preparation of special diets, bedside nursing care, and treatment by a physician or psychiatrist. [Ord. 887 § 3, 1991.]

18.04.427 Off-site hazardous waste facility.

"Off-site hazardous waste facility" means any facility which provides storage for hazardous waste or processes hazardous waste by physical, chemical, or biological means on property other than the property where the hazardous waste is produced for the purposes of making such waste nonhazardous waste or less hazardous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume. [Ord. 757 § 1(part), 1988.]

18.04.428 One hundred percent sight-obscuring.

"One hundred percent sight-obscuring" means that the required fence, wall, or landscaping is capable of screening the trash container in order that the trash container cannot be seen by the average person standing at grade on adjacent property or a public right-of-way. [Ord. 727 § 5, 1988.]

18.04.429 On-site hazardous waste facility.

"On-site hazardous waste facility" means any facility which provides storage for hazardous waste or processes hazardous waste by physical, chemical, or biological means on the same property where the hazardous waste is produced for the purposes of making such waste nonhazardous waste or less hazardous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume. [Ord. 757 § 1(part), 1988.]

18.04.430 Open space, required.

"Required open space" means a portion of the area of a lot or building site, other than required yards, which area is required by this title, as set forth in the different zones contained in this title, to be maintained between buildings, between wings of a building, and between buildings and any portion of a property boundary line not contiguous to a required front or side yard. Such open spaces, as in the case of required yards, are required to be free and clear of buildings and structures and to remain open and unobstructed from the ground to the sky. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.04.430), 1964.]

18.04.432 Ordinary high water mark.

"Ordinary high water mark" means the mark that will be found by examining the bed and banks of a stream or shoreline and ascertaining where the presence and action of waters are so common and usual, and so long maintained in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to topography and vegetation. [Ord. 925 § 11, 1992: Ord. 853 § 3(u), 1990.]

18.04.435 Outdoor advertising display.

"Outdoor advertising display" means any card, paper, cloth, metal, glass, wooden, or other display or device of any kind or character whatsoever placed or painted for outdoor advertising purposes on the ground or on any tree, wall, fence, rock, structure, or thing whatsoever. [Ord. 175 § 1(24.04.435), 1964.]

18.04.440 Outdoor advertising structure.

"Outdoor advertising structure" means a structure of any kind or character erected or maintained for outdoor advertising purposes, upon which any outdoor advertising display is, or can be placed. [Ord. 175 § 1(24.04.440), 1964.]

18.04.445 Parking area, private.

"Private parking area" means an open area, other than a street, alley, or other public property, limited to the parking of automobiles of occupants or employees of a dwelling, hotel, motel, apartment hotel, apartment house, boarding house, or lodging house to which these facilities are appurtenant. [Ord. 175 § 1(24.04.445), 1964.]

18.04.450 Parking area, public.

"Public parking area" means an open area other than a street, alley, or private parking

area as defined in this title, whether privately or publicly owned, which area is used for the parking of more than four automobiles. [Ord. 175 § 1(24.04.450), 1964.]

18.04.452 Parking lot, commercial.

"Commercial parking lot" means a building site, exclusive of public rights-of-way, or building dedicated to the parking of more than 10 passenger vehicles, serving patrons, occupants, and/or employees of a permitted use(s) not located on the site of the parking facility. [Ord. 697 § 12(A), 1987: Ord. 696 § 2(A), 1987.]

18.04.455 Parking space.

"Parking space" means an area accessible to vehicles, which area is provided, improved, maintained, and used for the sole purpose of accommodating a motor vehicle. [Ord. 175 § 1(24.04.455), 1964.]

18.04.457 Party of record.

"Party of record" means any person, group, association, or corporation that files an appeal, a person granted party status through intervention, the city department making the decision or determination, and the person who files an application for a land use action that is subject to appeal. [Ord. 1174 § 85, 1996.]

18.04.460 Pasture.

"Pasture" means an area confined within a fence or other physical barrier and which area is used for grazing or roaming of livestock. [Ord. 175 § 1(24.04.460), 1964.]

18.04.465 Person.

"Person" means and includes an individual, firm, copartnership, association or corporation, governmental agency, or political subdivision. [Ord. 175 § 1(24.04.465), 1964.]

18.04.470 Pet shop.

"Pet shop" means an establishment dealing in buying and selling small animals and birds such as are customarily or occasionally harbored in domestic establishments as pets, such as fish, dogs, cats, parrots, canaries and other song and decorative birds, monkeys, hamsters and similar animals, but specifically excluding dangerous animals or dangerous or poisonous or constricting reptiles; provided, no boarding or veterinarian services are rendered excepting bathing and clipping of dogs and cats. [Ord. 175 § 1(24.04.470), 1964.]

18.04.470.5 Pigs, potbellied and miniature.

"Pigs, potbellied and miniature" means a type of swine commonly known as the North American, Vietnamese, Chinese, or Asian potbellied pig (*Sus scrofa bittatus*) that is no more than 22 inches in height at the shoulder and no more than 150 pounds in weight. [Ord. 1091 § 1, 1994.]

18.04.471 Primary receptacle.

"Primary receptacle" means a trash container of not more than 30-gallon capacity which has the function of receiving trash from the person of individuals on a random basis and which is not used for receiving trash from other trash receptacles. [Ord. 727 § 1, 1988.]

18.04.475 Principal use.

"Principal use" means the primary or predominant use to which the property is or may be devoted, and to which all other uses on the premises are accessory. [Ord. 175 § 1(24.04.475), 1964.]

18.04.480 Professional offices.

"Professional offices" means offices maintained and used as a place of business conducted by persons engaged in the healing arts for human beings, such as doctors and dentists (but wherein no overnight care for patients is given), and by engineers, attorneys, realtors, architects, accountants, and other persons providing services utilizing training in and knowledge of the mental discipline as distinguished from training in occupations requiring mere skill or manual dexterity or the handling of commodities. [Ord. 175 § 1(24.04.480), 1964.]

18.04.482 Protection/maintenance (preservation), wetlands.

"Protection/maintenance (preservation)" means removing a threat to, or preventing the decline of, wetland conditions by an action in

or near a wetland. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also includes activities commonly associated with the term "preservation." Preservation does not result in a gain of wetland acres, may result in a gain in functions, and will be used only in exceptional circumstances. [Ord. 1400 § 2(10), 2007.]

18.04.483 Public entity.

"Public entity" means an agency of the federal, state, county, or local government, and includes all Washington municipal corporations and special purpose districts. [Ord. 1126 § 5, 1995.]

18.04.483.1 Public hearing.

"Public hearing" means a hearing, conducted by either the hearing examiner or the city council, that creates a record through testimony and the submission of evidence and information under procedures prescribed by law. An open record public hearing held prior to a decision on a proposed land use action is to be known as an "open record pre-decision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing" if no open record pre-decision hearing has been held on the land use action. [Ord. 1174 § 86, 1996.]

18.04.484 Public utility.

"Public utility" means a private business organization such as a public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, gas, and transportation for persons and freight. [Ord. 175 § 1(24.04.485), 1964. Formerly 18.04.485.]

18.04.485 Public utility distribution.

"Public utility distribution" means the method or mode by which a private business organization or governmental agency performing some public service, such as, but not limited to, water supply, electric power, gas, sewer, or transportation, delivers or spreads those services over an area and to individual customers. [Ord. 1100 § 2, 1994.]

18.04.486 Public utility facilities.

"Public utility facilities" means a building or complex that facilitates an action or process associated with a public utility which can be a private business or governmental agency performing some public service, such as, but not limited to, water supply, electric power, gas, sewer, or transportation. [Ord. 1100 § 3, 1994.]

18.04.486.5 Qualified professional.

"Qualified professional" means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant environmentally critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and two years of related work experience.

(1) A qualified professional for habitats must have a degree in biology and professional experience related to the subject species.

(2) A qualified professional for wetlands must have a degree in biology, must have taken a wetlands delineation course approved by the Army Corps of Engineers, and must have professional experience.

(3) A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

(4) A "qualified professional for critical aquifer recharge areas" means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments. [Ord. 1378 § 2(3), 2006.]

18.04.487 Ravine sidewall.

"Ravine sidewall" means a steep slope which abuts and rises from the valley floor of a stream and which was created by the wearing action of the stream. Ravine sidewalls contain slopes predominantly in excess of 40 percent,

although portions may be less than 40 percent. The toe of a ravine sidewall is the stream valley floor. The top of a ravine sidewall is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top is where the slope diminishes to less than 15 percent. Minor natural or man-made breaks in the slope of ravine sidewalls shall not be considered as the top. Benches with slopes less than 15 percent and containing developed or developable areas pursuant to chapter 18.86 DMMC shall be considered as the top. [Ord. 853 § 3(v), 1990.]

18.04.488 Razor wire.

"Razor wire" means tense steel coil around which a tape of razor sharp spikes are attached; also called concertina wire. [Ord. 1315 § 1(part), 2003.]

18.04.490 Reclassification of property.

"Reclassification of property" means a change in zone boundaries upon the zoning map, which map is part of this title when adopted in the manner prescribed by law. [Ord. 175 § 1(24.04.490), 1964.]

18.04.500 Reclassification of use.

"Reclassification of use" means the assignment, by amendment of this title, of a particular use to a different zone than that in which the use was originally permitted. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.04.500), 1964.]

18.04.505 Recorded.

"Recorded" means, unless otherwise stated, filed of record with the auditor of King County. [Ord. 175 § 1(24.04.505), 1964.]

18.04.510 Recreational area or community clubhouse, noncommercial.

"Noncommercial recreational area or community clubhouse" means an area devoted to facilities and equipment for recreational purposes, swimming pools, tennis courts, playgrounds, community clubhouses, and other similar uses maintained and operated by a nonprofit club or organization whose membership is limited to the residents within the area. [Ord. 175 § 1(24.04.510), 1964.]

18.04.515 Recreational area, commercial.

"Commercial recreational area" means an area operated for profit and devoted to facilities and equipment for recreational purposes, including swimming pools, tennis courts, playgrounds, and other similar uses whether the use of such area is limited to private membership or whether open to the public upon the payment of a fee. [Ord. 175 § 1(24.04.515), 1964.]

18.04.520 Recreation room, family room, or rumpus room.

"Recreation room," "family room," or "rumpus room" means a room or an area within a dwelling, or in a building accessory to a dwelling, designed, equipped, or used as a recreation room, including but not limited to games, music, refreshments and facilities for serving, and similar general utility purposes, but which room shall not be used as a separate dwelling unit. [Ord. 175 § 1(24.04.520), 1964.]

18.04.525 Residence.

"Residence" means a building or structure, or portion thereof, which is designed for and used to provide a place of abode for human beings, but not including hotels or motel units having no kitchens. The term "residence" includes the term "residential" as referring to the type of or intended use of a building or structure. [Ord. 175 § 1(24.04.525), 1964.]

18.04.527 Respite care facility.

"Respite care facility" means a facility providing care for adults designed to give the primary care givers temporary relief from care giving responsibilities. [Ord. 887 § 4, 1991.]

18.04.530 Rest, couvalescent, guest home; home for the aged.

Repealed by Ord. 887. [Ord. 175 § 1(24.04.530), 1964.]

18.04.532 Restoration.

"Restoration" means the return of an environmentally critical area to a state in which its functions, values, and size approach or exceed

its unaltered state as closely as possible. [Ord. 853 § 3(w), 1990.]

18.04.533 Restoration, wetlands.

"Restoration" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:

(1) "Re-establishment" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

(2) "Rehabilitation" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland. [Ord. 1400 § 2(11), 2007.]

18.04.535 Retaining wall.

"Retaining wall" means any wall used to resist the lateral displacement of any material. [Ord. 175 § 1(24.04.535), 1964.]

18.04.536 Retirement housing.

"Retirement housing" means a building or complex of buildings, exclusively designed for and occupied by households having at least one person 62 years of age or older, which provides common facilities such as but not limited to dining and recreation. Some or all of the dwellings may contain kitchens. [Ord. 887 § 5, 1991.]

18.04.540 Roof.

"Roof" means a structural covering over any portion of a building or structure, including the projections beyond the walls or supports of the building or structure. An open work covering shall not be considered a roof if the upper horizontal surface area of the component solid portions thereof measured on the horizontal plane do not exceed 20 percent of the area of the covering. [Ord. 175 § 1(24.04.540), 1964.]

18.04.545 Sanitarium.

"Sanitarium" means a health station or retreat or other place where resident patients are kept, and which specializes in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and licensed by state agencies under provisions of law to provide facilities and services in surgery, obstetrics, and general medical practice as distinguished from treatment of mental and nervous disorders and alcoholics, but not excluding surgical and postsurgical treatment of mental cases. [Ord. 175 § 1(24.04.545), 1964.]

18.04.550 Schools – Elementary, middle, junior high, and high.

"Elementary schools," "middle schools," "junior high schools," and "high schools" mean institutions of learning giving general academic instruction in the several branches of learning and study required by the education code[1] of the state to be taught in the public and parochial schools. [Ord. 767 § 3, 1988: Ord. 175 § 1(24.04.550), 1964.]

18.04.552 Secondary or final trash receptacles.

"Secondary or final trash receptacle" means a trash container which (1) is designed to receive trash from other trash receptacles, and/or (2) is the final repository of trash from which any trash collection organization loads trash for transportation to its ultimate distribution. [Ord. 727 § 4, 1988.]

18.04.555 Secondhand store.

"Secondhand store" means any retail establishment in which the principal portion of the articles, commodities, or merchandise handled, offered for sale, or sold on the premises are not new. "Secondhand stores" shall not be

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considered as including antique stores or pawnshops. [Ord. 175 § 1(24.04.555), 1964.]

18.04.557 Seismic hazard areas.

"Seismic hazard areas" means those areas subject to severe risk of earthquake damage as a result of seismically induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is affected primarily by:

(1) The magnitude of an earthquake;

(2) The distance from the source of an earthquake;

(3) The type of thickness of geologic materials at the surface; and

(4) The type of subsurface geologic structure.

Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density usually in association with a shallow ground water table. Known seismic hazard areas are mapped in the "Washington State Department of Natural Resources, Geologic Map GM-41, Liquefaction Susceptibility for the Des Moines and Renton 7.5-minute Quadrangles, Washington," and "Washington State Department of Natural Resources, Geologic Map GM-43, Liquefaction Susceptibility for the Auburn and Poverty Bay 7.5-minute Quadrangles, Washington." [Ord. 1400 § 6, 2007: Ord. 853 § 3(x), 1990.]

18.04.560 Service station, automobile.

"Automobile service station" means an occupancy which provides for:

(1) The servicing of motor vehicles and operations incidental thereto limited to the retail sale of petroleum products and automotive accessories; automobile washing by hand; waxing and polishing of automobiles; tire changing and repairing (excluding recapping); battery service, charging, and replacement, excluding repair and rebuilding; radiator cleaning and flushing, excluding steam cleaning and repair; and installation of accessories.

(2) The following operations if conducted within a building: lubrication of motor vehicles; brake servicing limited to servicing and replacement of brake cylinders, lines, and brake shoes; wheel balancing; the testing, adjustment, and replacement or servicing of carburetors, coils, condensers, distributor caps, fan belts, filters, generators, points, rotors, sparkplugs, voltage regulators, water and fuel pumps, water hoses, and wiring. [Ord. 175 § 1(24.04.560), 1964.]

18.04.561 Shorelines of the state.

"Shorelines of the state" means lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in chapter 90.58 RCW. [Ord. 1400 § 2(14), 2007.]

18.04.561.1 Soil Survey King County Area Washington.

"Soil Survey King County Area Washington" contains information that can be applied in land use management. All the soils of the King County Area are shown on detailed maps and described in text. The city considers two publications of the survey when interpreting soil information – the September 1952 and November 1973 issues. The survey is published by the U.S. Department of Agriculture Soil Conservation Service. [Ord. 853 § 3(z), 1990.]

18.04.561.2 Slope.

"Slope" means an inclined ground surface, the inclination of which is expressed as a ratio (percentage) of vertical distance to horizontal distance by the following formula:

$$\frac{\text{vertical distance}}{\text{horizontal distance}} \times 100 = \%\ \text{slope}$$

Another method of measuring the inclination of the land surface is by measuring the angle, expressed in degrees, of the surface above a horizontal plane. The following chart

shows the equivalents between these two methods of measurement for several slopes:

Percent Slope	Angle of Inclination
8.7	5.0°
15.0	8.5°
25.0	14.0°
30.0	16.7°
40.0	21.8°
50.0	26.6°
100.0	45.0°

[Ord. 1400 § 7, 2007: Ord. 853 § 3(y), 1990.]

18.04.561.3 Solid waste containers.

"Solid waste container" means a garbage can, dumpster, or other receptacle used for disposal and/or storage of trash, rubbish, garbage, junk, scrap, debris, refuse, recycling, yard waste, and other discarded materials. [Ord. 1069 § 1, 1993: Ord. 937 § 5, 1992: Ord. 629 § 1, 1985. Formerly 18.04.637.]

18.04.561.4 Solid waste containers, private.

"Private solid waste container" means a solid waste container that is either privately owned or privately used and maintained for the purpose of waste reduction or providing health and sanitation support for a private facility or organization. [Ord. 1069 § 2, 1993: Ord. 727 § 2, 1988. Formerly 18.04.638.]

18.04.561.5 Solid waste containers, public.

"Public solid waste container" means a solid waste container placed for the purpose of providing a receptacle for public use to prevent littering, promote health and sanitation of the general public, and/or promote waste reduction on publicly owned and operated facilities, properties, or rights-of-way, when such facilities or properties are generally open to the public and used for public purposes. Without limitation, such public facilities shall include schools, parks, marinas, public buildings, and the like, but shall not include public facilities that are not generally open to the public. [Ord. 1069 § 3, 1993: Ord. 727 § 3, 1988. Formerly 18.04.639.]

18.04.561.6 Special environmental study.

"Special environmental study" means a technical report prepared by a qualified professional. Special environmental studies are intended to evaluate past and present environmental conditions of certain properties, potential environmental impacts associated with certain development proposals, and as appropriate, recommend mitigation measures that can be expected to lessen the severity of identified adverse environmental impacts. The content and scope of required special environmental studies shall be as specified by the community development director. [Ord. 925 § 12, 1992. Formerly 18.04.561.5.]

18.04.561.7 Species of local importance.

"Species of local importance" are those species that are of local concern due to their population status or their sensitivity to habitat manipulation or that are game species. [Ord. 925 § 13, 1992.]

18.04.562 Specified anatomical areas.

"Specified anatomical areas" means:

(1) Less than completely and opaquely covered human genitals, anus, pubic region, buttock, or female breast below a point immediately above the top of the areola; or

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered. [Ord. 1288 § 1(part), 2001: Ord. 655 § 3, 1986.]

18.04.563 Specified sexual activities.

"Specified sexual activities" means any of the following:

(1) Human genitals in a state of sexual stimulation or arousal;

(2) Acts of human masturbation, sexual intercourse, sodomy, oral copulation, or bestiality;

(3) Fondling or other erotic touching of hnman genitals, pubic region, buttocks, or female breasts, whether clothed or unclothed, of oneself or of one person by another; or

(4) Excretory functions as part of or in connection with any of the activities set forth in this section. [Ord. 1288 § 1(part), 2001: Ord. 655 § 2, 1986.]

18.04.565 Sign. *Repealed by Ord. 584.* [Ord. 175 § 1(24.04.565), 1964.]

18.04.566 Unlighted sign. *Repealed by Ord. 584.* [Ord. 175 § 3, 1964.]

18.04.567 Lighted sign. *Repealed by Ord. 584.* [Ord. 175 § 4, 1964.]

18.04.570 Stable, private.

"Private stable" means a detached building in which horses or other beasts of burden owned by the occupants of the premises are kept, and in which no such animals are kept for hire, remuneration, or sale. [Ord. 175 § 1(24.04.570), 1964.]

18.04.575 Stable, public.

"Public stable" means a stable other than a private stable. [Ord. 175 § 1(24.04.575), 1964.]

18.04.580 Stand.

"Stand" means a structure for the display and sale of products with no space for customers within the structure itself. [Ord. 175 § 1(24.04.580), 1964.]

18.04.581 Standard Industrial Classification Manual.

"Standard Industrial Classification Manual" means the 1987 edition of the book Standard Industrial Classification Manual as published by the United States Office of Management and Budget. A copy of this book is maintained on file in the office of the city clerk and in the office of the community development director and is available for public inspection. [Ord. 1104 § 13, 1994.]

18.04.582 State designated endangered, threatened, and sensitive species.

"State designated endangered, threatened, and sensitive species" means those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status. This section shall not apply to hair seals and sea lions that are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear. [Ord. 1400 § 2(12), 2007.]

18.04.583 State priority habitats and areas associated with state priority species.

"State priority habitats and areas associated with state priority species" means those areas considered priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife. [Ord. 1400 § 2(13), 2007.]

18.04.585 Story.

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above it, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceil-

ing or roof above. If the finished floor level directly above a basement, cellar, or unused under floor space is more than six feet above grade, as defined in DMMC 18.04.320, for more than 50 percent of the total perimeter or is more than 12 feet above grade, as defined in DMMC 18.04.320, at any point, such basement, cellar, or unused under floor space shall be considered a story. [Ord. 767 § 4, 1988: Ord. 175 § 1(24.04.585), 1964.]

18.04.587 Stream.

"Stream" means an area where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. Stream channels or beds show clear evidence of the passage of water and include, but are not limited to, bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses unless they are used by salmonids or used to convey streams naturally occurring prior to construction. Swales, which are shallow drainage conveyances with relatively gentle side slopes and generally with flow depths less than one foot, shall be considered streams when hydrologic and hydraulic analyses done pursuant to a development proposal predict formation of a defined channel after development. To differentiate between levels of stream and marine shoreline protection and the application of development standards, streams are classified according to the Washington State Department of Natural Resources Forest Practices Board water typing system specified in WAC 222-16-030 as follows:

(1) "Type S water" means all waters inventoried as "shorelines of the state," including periodically inundated areas of their associated wetlands, under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW;

(2) "Type F water" means segments of natural waters other than Type S waters, which contain fish or fish habitat, including waters diverted for use by a federal, state or tribal fish hatchery from the point of diversion for 1,500 feet or the entire tributary if the tributary is highly significant for protection of downstream water quality;

(3) "Type Np water" means all segments of natural waters that are not Type S or F waters. These are perennial nonfish habitat streams that are physically connected to Type S or F waters by an aboveground channel system, stream or wetland. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type Np waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow;

(4) "Type Ns water" means all segments of natural waters that are not Type S, F, or Np waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Ns waters must be physically connected by an aboveground channel system to Type S, F, or Np waters. [Ord. 1400 § 8, 2007: Ord. 853 § 3(aa), 1990.]

18.04.588 Stream corridor.

"Stream corridor" means a perennial, intermittent, or ephemeral stream including its channel bottom, lower and upper banks, area beyond the top of the upper bank which influences the stream and is influenced by the presence of water, and the vegetation inhabiting this area. This area is known as the "riparian zone" which is an area transitional between aquatic and terrestrial (upland) ecosystems having distinct vegetation and soil characteristics. Riparian zones are most commonly recognized by bottomland, flood plain, and streambank vegetation. In developed watersheds, portions of the stream corridor may currently be in a partially culverted or channelized condition by artificial conveyance systems. [Ord. 853 § 3(bb), 1990.]

18.04.590 Street.

"Street" means a public or recorded private thoroughfare which affords primary means of access to abutting property. [Ord. 175 § 1(24.04.590), 1964.]

18.04.595 Street line.

"Street line" means the boundary line between a street and the abutting property. [Ord. 175 § 1(24.04.595), 1964.]

18.04.600 Street, side.

"Side street" means a street which is adjacent to a corner lot or reverse corner lot and which extends in the general direction of the line determining the depth of the corner or reverse corner lot. [Ord. 175 § 1(24.04.600), 1964.]

18.04.605 Structure.

"Structure" means anything constructed in the ground, or anything erected which requires location on the ground or water, or is attached to something having location on or in the ground, but not including fences less than six feet in height, or paved areas. [Ord. 175 § 1(24.04.605), 1964.]

18.04.610 Structural alterations.

"Structural alterations" means any change in the supporting members of a building or structure, such as foundations, bearing walls, columns, beams, floor or roof joists, girders or rafters, or changes in the exterior dimensions of the building or structure, or increase in floor space. [Ord. 175 § 1(24.04.610), 1964.]

18.04.611 Substantial change.

"Substantial change" means modification of the scope, use, or other attribute of a pending land use action that results in, or may result in, significant differences in the type or degree of impact(s), as determined by the community development director. [Ord. 1174 § 87, 1996.]

18.04.612 Supermarket.

"Supermarket" means a large retail food store having more than 5,000 square feet of gross floor area. [Ord. 697 § 12(B), 1987: Ord. 696 § 2(B), 1987.]

18.04.613 Surface Water Design Manual for the City of Des Moines.

"Surface Water Design Manual for the City of Des Moines" is a document which contains the requirements and standards for designing surface and storm water management systems and regulates proposed projects by a mixture of requirements and performance and design standards. The Surface Water Design Manual for the City of Des Moines is referred to in this title as "surface water design manual." [Ord. 853 § 3(cc), 1990.]

18.04.615 Theater, drive-in.

"Drive-in theater" means an establishment to provide entertainment through projection of motion pictures on an outdoor screen for audiences whose seating accommodations are provided by their own motor vehicles parked in car spaces provided on the same site with the outdoor screen. [Ord. 175 § 1(24.04.615), 1964.]

18.04.620 To place.

The verb "to place" and any of its variants as applied to advertising displays and outdoor advertising structures, includes maintaining, erecting, constructing, posting, painting, printing, nailing, gluing, or otherwise fastening, affixing, or making visible in any manner whatsoever. [Ord. 175 § 1(24.04.620), 1964.]

18.04.622 Townhouse development.

"Townhouse development" means two or more lots approved through the subdivision or short subdivision process for townhouse dwellings. [Ord. 1197 § 4, 1997.]

18.04.625 Trailer, automobile commercial.

"Automobile commercial trailer" means a vehicle without motor power designed to be drawn by a motor vehicle and which trailer is used or is to be used for carrying goods and property. [Ord. 175 § 1(24.04.630), 1964.]

18.04.630 Trailer, automobile house.

"Automobile house trailer" means a vehicle without motor power designed to be drawn by a motor vehicle and to be used for human habitation, including a trailer coach, camper,

mobile home, or any self-propelled vehicle having a body designed for or converted to the same use as a house trailer. [Ord. 175 § 1(24.04.625), 1964.]

18.04.635 Trailer park, trailer court, mobile home park, and public trailer camp.

"Trailer park," "trailer court," "mobile home park," "public trailer camp" mean any area or tract of land used or designed to accommodate two or more automobile house trailers. [Ord. 175 § 1(24.04.635), 1964.]

18.04.637 Trash containers.

Recodified as 18.04.561.3 by Ord. 1069.

18.04.638 Trash containers, private.

Recodified as 18.04.561.4 by Ord. 1069.

18.04.639 Trash containers, public.

Recodified as 18.04.561.5 by Ord. 1069.

18.04.640 Unclassified use.

"Unclassified use" means a use possessing characteristics of such unique and special form as to make impractical its being made automatically and consistently permissible in any defined zone as set forth in this title. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.04.640), 1964.]

18.04.645 Unclassified use permit.

"Unclassified use permit" means a limiting authority granted by the city and the documented evidence thereof to locate an unclassified use at a particular location, and which limiting authority is required to apply or modify the controls stipulated in this title. [Ord. 175 § 1(24.04.645), 1964.]

18.04.650 Unlisted uses.

"Unlisted uses" means uses which are not specifically named as permitted in any zone contained within this title. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.04.650), 1964.]

18.04.652 Upper bank.

"Upper bank" is that portion of the topographic cross-section of a stream which extends from the break in the general slope of the surrounding land to the normal high water line. [Ord. 853 § 3(dd), 1990.]

18.04.655 Use.

"Use" means the nature of the occupancy, the type of activity, or the character and form of improvements to which land is devoted or may be devoted. [Ord. 175 § 1(24.04.655), 1964.]

18.04.660 Variance.

"Variance" means an adjustment in the application of the specific regulations of this title to a particular piece of property which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same vicinity and zone and which adjustment remedies disparity in privileges. [Ord. 175 § 1(24.04.660), 1964.]

18.04.661 Vehicle.

"Vehicle" as used in this title, means all instrumentalities capable of movement by means of circular wheels, skids, or runners of any kind, along roadways or paths or other ways of any kind, specifically including, but not limited to, all forms of automotive vehicles, buses, trucks, cars and vans, all forms of trailers or mobile homes of any size whether capable of supplying their own motive power or not, without regard to whether the primary purpose of which instrumentality is or is not the conveyance of persons or objects, and specifically including all such automobiles, buses, trucks, cars, vans, trailers, and mobile homes even though they may be at any time immobilized in any way and for any period of time of whatever duration. [Ord. 255 § 1, 1969: Ord. 175 § 1(24.04.661), 1964.]

18.04.663 Wetland.

"Wetland" means an area inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and

similar areas (Army Corps of Engineers Regulation 33 CFR 323.2(c)). Wetlands and the boundaries of wetlands are those identified using the methodologies outlined in the "Washington State Wetlands Identification and Delineation Manual (Ecology Publication No. 96-94, March 1997)." Wetlands include ponds, but do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention/retention facilities, farm ponds, and landscape amenities or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands shall include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands pursuant to chapter 18.86 DMMC.

To differentiate between levels of wetland protection and the application of development standards, wetlands shall be rated according to the "Washington State Wetland Rating System for Western Washington," (Ecology Publication No. 04-06-025, August 2004) or as revised by the Department of Ecology. Wetland rating categories shall be applied as the wetland exists at the time of the adoption of this chapter or as it exists at the time of an associated permit application. Wetland rating categories shall not change due to illegal modifications.

(1) Category I. Category I wetlands represent a unique or rare wetland type, are more sensitive to disturbance than most wetlands, are relatively undisturbed and contain some ecological attributes that are impossible to replace within a human lifetime, or provide a very high level of functions. Category I wetlands are:

(a) Mature forested wetlands larger than one acre; or

(b) Wetlands that perform many functions well.

(2) Category II. Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but they still need a relatively high level of protection. Category II wetlands are:

(a) Wetlands identified by the Washington State Department of Natural Resources as containing "sensitive" plant species;

(b) Wetlands with a moderately high level of functions.

(3) Category III. Generally, wetlands in this category may have been disturbed in some way and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands. Category III wetlands are wetlands with a moderate level of functions.

(4) Category IV. Category IV wetlands have the lowest levels of functions and are often heavily disturbed. These are wetlands that should be replaceable, and in some cases may be improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree. [Ord. 1400 § 9, 2007: Ord. 1378 § 11, 2006: Ord. 925 § 14, 1992: Ord. 853 § 3(ee), 1990.]

18.04.665 Yard.

"Yard" means an open space other than a court on a lot, unoccupied and unobstructed from the ground upward unless specifically otherwise permitted in this title. [Ord. 175 § 1(24.04.665), 1964.]

18.04.670 Yards – Types and measurements.

(1) "Front yard" means an area extending across the full width of the lot and lying between the lot front line and a line drawn parallel thereto, and at a distance therefrom equal to the required front yard depth as prescribed in each zone. Front yards shall be measured by a line at right angles to the lot front line, or by the radial line or radial line extended in the case of a curved lot front line.

(2) "Side yard" means an open area measured from the lot side line toward the center of the lot and extending from the rear line of the required front yard, or from the lot front line if there is no required front yard, toward the lot rear line to a point measuring two-thirds of the

depth of the lot, except that on the side street side of corner lots and reverse corner lots the required side yard shall extend to the rear line of the lot. The width of the side yard shall be measured horizontally from, and be parallel to the lot side line from which it is measured. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.04.670), 1964.]

18.04.675 Yard, rear line of required front.

"Rear line of the required front yard" means a line parallel to the lot front line and at a distance therefrom equal to the depth of the required front yard, and extending across the full width of the lot. [Ord. 175 § 1(24.04.675), 1964.]

18.04.680 Zone.

"Zone" means an area accurately defined as to boundaries and location on an official map and within which area only certain types of land uses are permitted, and within which other types of land uses are excluded, as set forth in this title. [Ord. 175 § 1(24.04.680), 1964.]

Chapter 18.06

ZONES, MAPS, AND BOUNDARIES

Sections

18.06.010 Purpose of zones.

The basic purpose of this title is to classify uses and to regulate the location of such uses in such manner as to group as nearly as possible those uses which are mutually compatible, and to protect each such group of uses from the intrusion of incompatible uses which would damage the security and stability of land and improvements and which would also prevent the greatest practical convenience and service to the citizens of Des Moines. It is also recognized that intrusion of uses in one zone upon uses in another lighter zone may also result from effects reaching across boundary lines separating contiguous zones due to noise, smoke, equipment, open air activity, or other features. To further accomplish the goal of compatibility, varying degrees of regulations are established for certain uses in the commercial and business park zones when such uses are contiguous to lighter zones. A further purpose of this title is to make it possible for Des Moines to efficiently and economically design, install, and operate physical public service facilities in terms of type, size, and capacity, including streets, sewers, drains, schools and other public buildings, to adequately and permanently meet the ultimate requirements as determined by a defined intensity and type of land use; to require an orderly arrangement of essential related facilities with particular reference to the movement of people and goods, including the traffic pattern and well-located and well-designed off-street parking areas and, through the medium of the zoning map which is a part of this title, to establish the geograph-

ical location and boundaries of the zones to which the different zones will apply.

A further purpose of this title is to establish required minimum lot area, yards and open spaces as a means of providing a suitable environment for living, business and industry, and to maintain reasonable population densities and reasonable intensities of land use, all for the general purpose of conserving public health, safety, morals, convenience, and general welfare. [Ord. 1237 §§ 3, 4, 1999; Ord. 175 § 1(24.06.010), 1964.]

18.06.020 Names of zones.

To accomplish the purpose of this title, the following use zones are established and regulations are set forth therein defining the permissible uses, the height and bulk of buildings, the area of yards and other open spaces about buildings, and the density of population; such zones are known as follows:

(1) Residential Zones.

(a) Single-Family Residential Zones.

(i) R-SR Residential: Suburban Residential;

(ii) R-SE Residential: Suburban Estate;

(iii) RS-15,000 Residential: Single-Family 15,000;

(iv) RS-9,600 Residential: Single-Family 9,600;

(v) RS-8,400 Residential: Single-Family 8,400;

(vi) RS-7,200 Residential: Single-Family 7,200;

(vii) RS-4,000 Residential: Single-Family 4,000;

(b) Multifamily Residential Zones.

(i) RA-3,600 Residential: Attached Townhouse and Duplex 3,600;

(ii) RM-2,400 Residential: Multifamily 2,400;

(iii) RM-1,800 Residential: Multifamily 1,800;

(iv) RM-900 Residential: Multifamily 900;

(v) RM-900A Residential: Multifamily 900A;

(vi) RM-900B Restricted Service Zone.

(2) Commercial Zones.

(a) N-C Neighborhood Commercial;

(b) B-C Business Commercial;

(c) C-C Community Commercial;

(d) D-C Downtown Commercial;

(e) C-G General Commercial

(f) I-C Institutional Campus;

(g) B-P Business Park;

(h) H-C Highway Commercial. [Ord. 1544 § 3, 2012: Ord. 1397 § 1, 2007: Ord. 1237 §§ 1, 3, 1999; Ord. 1197 § 23, 1997; Ord. 1170 § 2, 1996; Ord. 1140 § 3, 1995: Ord. 1104 § 15, 1994: Ord. 175 § 1(24.06.020 (part)), 1964.]

18.06.030 Degree of restrictiveness.

In the different major categories of zones established by this title, the residential zones are considered the most restrictive and other zones are less restrictive. Although the elements of required minimum lot areas and open spaces are involved in varying degrees in determining the position of uses in the scale of restrictiveness, the characteristics of uses as set forth in the various individual zones are the primary criteria. In the commercial zones the uses permitted actually determine the sequence of restrictiveness. To further distinguish the degree of restrictiveness in the various major categories of zones within which there is more than one zone, the sequence is as follows:

(1) In the residential zones, the zone that establishes the lowest population density and requires the highest standards of lot area, yards, and open spaces is considered to be the most restrictive, and the uses permitted in such zone are considered to be the lightest and most restricted. The single-family residential zones and the uses permitted therein are considered to be the lightest and most restrictive, and in this category there is a further distinction in terms of required minimum lot area and open spaces that establish a degree of less restrictiveness in the following sequence: R-SR, R-SE, RS-15,000, RS-9,600, RS-8,400, RS-7,200, and RS-4,000, the numeral suffix referring to required minimum lot areas. As greater population density is permitted by zone, the uses permitted are considered to be

heavier and less restrictive in the following sequence: RA-3,600, RM-2,400, RM-1,800, RM-900A, RM-900B, and RM-900. In the residential zones the numeral suffix refers to required lot area per dwelling unit.

(2) In the commercial zones the zone that establishes the most stringent performance standards is considered to be the lightest and most restrictive zone, and the uses permitted in such zone are considered to be the lightest and most restrictive commercial uses. In the commercial zones set forth in this title the N-C zone and the uses permitted therein are the lightest and most restricted, and the zones become heavier and less restrictive in the following sequence: B-C, C-C, D-C, C-G, I-C, B-P, and H-C. [Ord. 1544 § 4, 2012: Ord. 1397 § 2, 2007: Ord. 1237 §§ 4, 5, 1999: Ord. 1197 § 24, 1997; Ord. 1170 § 3, 1996; Ord. 1140 § 4, 1995: Ord. 175 § 1(24.06.030), 1964.]

18.06.040 Uncertainty of boundaries.

Where uncertainty exists as to the boundaries of any zone shown upon the zoning map or any part or unit thereof, the following rules shall apply:

(1) Where such boundaries are indicated as approximately following street or alley lines or lot lines, such lines shall be construed to be such boundaries;

(2) In the case of unsubdivided property, and where a zone boundary divides such property, the location of such boundaries, unless the same are indicated by dimensions, shall be determined by use of the scale appearing on the zoning map;

(3) Where a public street or alley is officially vacated or abandoned, the area comprising such vacated street or alley shall acquire the zone of the property to which it reverts;

(4) Where a lot subdivided and recorded subsequent to the zoning of the area in which it is located becomes so placed that it is unequally bisected longitudinally by the boundary lines of different zones, the zone boundary shall be considered as following the lot lines of the lot in such manner as to place the lot wholly in that zone which applies to the major portion of the lot;

(5) Where property abuts a lake, river, or body of water, the zone shall extend to the inner harbor line and where no harbor line exists, to a line which the army engineers would define as the line of navigability;

(6) Where a lot is equally bisected longitudinally by a zone boundary line, the total lot shall acquire the most restrictive zone and the highest area requirement of the two zones involved;

(7) Where a lot is bisected by the boundary line between two zones and such boundary line parallels or approximately parallels the street on which such lot fronts, the total area of such bisected lot shall acquire the same zone requirement as the front portion of the lot. This provision shall not apply to through lots. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.06.080), 1964.]

18.06.050 Property not zoned.

Any property which, for any reason other than the fact that it is a right-of-way of a street, alley, or railroad, is located within an adopted part of the zoning map but is not designated as being zoned shall be deemed to be zoned RS-15,000. [Ord. 1237 § 6, 1999: Ord. 175 § 1(24.06.090), 1964.]

18.06.060 Classification of rights-of-way.

Areas of streets or alleys and railroad rights-of-way, other than such as are designated on the zoning map as being classified in one of the zones provided in this title, shall be deemed to be unclassified and, in the case of streets, permitted to be used only for street purposes as defined by law, and in the case of railroad rights-of-way, permitted to be used solely for the purpose of accommodating tracks, signals, other operating devices, the movement of rolling stock, public utility lines, and facilities accessory to and used directly for the delivery, distribution, or rendering of services to bordering land uses. [Ord. 175 § 1(24.06.100), 1964.]

18.06.070 Lot area requirement symbol.

In the single-family residential zone where a number follows the indicated zone on the zoning map such number shall indicate which of the minimum lot area, yards, and open

spaces required in the zone applies to the properties involved. [Ord. 1237 §§ 3, 4, 1999; Ord. 175 § 1(24.06.110), 1964.]

18.06.080 Limitation of land use.

Except as provided in this title, no building or structure shall be erected, reconstructed, or structurally altered, nor shall any building, structure, or land be used for any purpose except as specifically provided in this title and allowed in the zone in which such building, land, or use is located. [Ord. 175 § 1(24.06.120), 1964.]

Chapter 18.08

SINGLE-FAMILY RESIDENTIAL ZONE

Sections

18.08.010 Purpose of zone.

The principal objective and purpose to be served by this zone and its application is to create a living environment of the highest standards for single-family dwellings. Other related uses contributing directly to a complete living environment are considered compatible and therefore also permitted. A further related consideration is to make it possible to more efficiently and economically design, install, and maintain all physical public service facilities in terms of size and capacity to adequately and permanently meet needs resulting from a defined intensity of land use. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.08.010), 1964.]

18.08.020 Permitted uses.

In a single-family residential zone the following uses only are permitted and as specifically provided in and allowed by this chapter, subject to the off-street parking requirements and the general provisions and exceptions set forth in this title beginning with chapter 18.36 DMMC:

(1) A one-family dwelling;

(2) Accessory buildings and uses including, but not limited to, the following:

(a) Accessory living quarters;

(b) Private garages designed to accommodate not more than four cars;

(c) *(Repealed by Ord. 532);*

(d) Lodgers limited to two;

(e) Private docks and mooring facilities and a private boathouse or hangar for the sole use of occupants of the premises to accommodate private noncommercial pleasure craft. Boathouses, hangars, docks and moorings shall be accessory to the primary use on the property to which they are contiguous, provided:

(i) No part of the boathouse or hangar shall extend more than 16 feet above the mean high water level;

(ii) A structure shall not be located closer to a property side line, or property side line extended, than the width of the required side yard on the lot to which such facilities are accessory;

(iii) The total area of covered moorages, boathouses, or hangars shall not exceed 1,000 square feet;

(iv) Covered structures shall abut upon the natural shoreline;

(v) Such structure shall not have a width greater than 50 percent of the width of the lot at the natural shoreline upon which it is located;

(vi) A boat using such moorage shall not be used as a place of residence when so moored;

(f) Foster family day care home;

(g) Greenhouses, private and noncommercial, for propagation and culture only and no sales from the premises are permitted;

(h) One antenna system that exceeds the maximum building height specified for the residential zone and which:

(i) Does not exceed 15 feet in height above the building height limitation specified for the zone;

(ii) Is set back the greater of the applicable building setback for the zone where located, or the vertical height of the antenna system measured from the center point of the base of the mast horizontally to the nearest property line;

(iii) Has a maximum horizontal cross-sectional area for that part of the mast that is above the building height limitation for the zone such that an imaginary four-inch diameter circle would encompass all points of the horizontal cross-section;

(iv) Has a maximum allowable three-dimensional space intrusion of 1,200 cubic feet for single ground plane antennas with a single driven element, and 200 cubic feet for beams, quads, and other multi-element antennas; except these limitations on three-dimensional space intrusion are not applicable to single long-wire antennas, single whip antennas, and single coaxial antennas. In this paragraph, "three-dimensional space intrusion" means the space within an imaginary rectangular prism that contains all extremities of an antenna;

(v) Does not encroach into the front, side, or rear setbacks required for the zone. A guy wire and anchor point for an antenna system is prohibited in the required front yard or within three feet of the side or rear property lines; except if an alley abuts a rear property line, a guy wire and anchor point may extend to the rear property line;

(vi) A variation from the above limitations not to exceed 10 percent may be granted by the department of community development; such variation shall be granted when it will not significantly increase the hazard factor, the aesthetic impact, or the economic consequences of such antenna systems;

(i) Swimming pools and other recreational facilities for the sole use of occupants of premises and their guests;

(3) Art galleries and museums, when located in a public park;

(4) Boat moorages for pleasure craft only in connection with community and noncommercial recreational facilities as set forth in this chapter, whether the moorage is publicly or privately owned, subject to the issuance of a conditional use permit provided the following minimum conditions are conformed to:

(a) No boat sales, service, repair, boat charter, or rental are permitted on the premises;

(b) The deck of a pier shall be no more than five feet above high water level;

(c) On-shore toilet facilities shall be provided;

(d) Boats using such moorage facilities shall not be used as a place of residence;

(e) No overhead wiring shall be permitted on piers or floats except within covered moorage structures;

(f) All covered structures over water shall abut upon the shore and be at least 40 feet apart when placed side by side; when covered structures are placed end to end or side to end, one of the structures shall abut upon the shore and the structures shall be at least 15 feet apart;

(g) No covered structures over water shall be permitted to extend out from shore a distance greater than 50 percent of the maximum permitted distance from shore of a pier on subject premises, but in no case a distance of more than 300 feet from shore, unless the outer line of the property is less than 200 feet from shore, a covered structure may be permitted to extend to the outer property line;

(h) No pier, including finger piers, shall occupy more than 10 percent of the water area of a lot upon which the same is built, nor shall the total area of covered structures over water occupy more than 20 percent of the water area of such lot;

(i) All covered structures over water under one ownership shall be built in a uniform manner and design and no point in the roof of such structure shall be higher than 16 feet above high water in fresh water and no floating moorage located in fresh or tidal water shall have a structure higher than 16 feet from the water line;

(j) The roofs of covered moorage shall contain no more than 7,200 square feet of area in any one unit and such roofs shall not be supported directly by extended piling;

(k) Side walls on covered structures shall not exceed 50 percent of the area of any three sides and shall be of rigid or semirigid material and shall cover from external view all roof bracing;

(5) Cemeteries that were legally in existence prior to August 3, 1964;

(6) Churches, providing the following conditions are conformed to:

(a) All buildings and structures on the site shall not cover more than 40 percent of the area of the site;

(b) The depth of the required front yard shall be the same as that required for the

zone in which the site is located as identified on the zoning map;

(c) Buildings and structures on the site shall not be closer than 30 feet to any property line that is a common property line with residential property, except that a detached one-family dwelling on such site need conform only to the yard requirements and required distance between buildings as prescribed by the zone in which the site is located;

(d) The height limits of the zone in which the site is located shall apply, except that the height shall be measured to the mean height of the roof;

(e) On interior lots the required side yards may be used to provide off-street parking areas and on corner lots the interior side yard may be similarly used. Under no circumstances may the required front yard or the side yard on the side street be used for off-street parking;

(f) Where areas devoted to off-street parking are contiguous to residentially zoned property, then on the property line common with such residentially zoned property there shall be erected and maintained a solid wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height, and such walls or fences may be built progressively as the parking facilities are installed;

(g) All lights provided to illuminate a parking area or building on such site shall be so arranged as to direct the light away from adjoining premises;

(h) Church sites shall abut and be accessible from at least one public street having two moving traffic lanes and a dedicated width that will permit not less than a 36-foot roadway;

(i) The following signs only are permitted:

(i) One unlighted sign area on the outside wall of the main building and parallel thereto, having an area not greater than 20 square feet;

(ii) A detached sign having dimensions totaling not more than 20 square feet and on which both faces may be utilized, such sign being securely mounted on the ground on supports and the top of which sign shall be not more than six feet above the natural level of the ground upon which it rests. On corner and reverse corner lots one such sign may be placed facing each street;

(j) For purposes of determining conformance to the foregoing conditions and the parking requirements, a plot plan showing ultimate location and use of all buildings, location of signs, location and amount of off-street parking areas, location and adequacy of ingress to and egress from parking areas, landscaping and sketches to scale showing the building elevations and floor space to be devoted to seating or assembly purposes shall be filed with and approved by the building department prior to the issuance of any building permit and thereafter the issuance of building permits shall be governed by and conform to the approved plot plan. If, later, a modified plot plan is submitted, the modified plan shall conform to the conditions and requirements of this title or any amendments in effect at the time the modified plan is submitted;

(7) Nursery schools, day care centers, or mini-day care programs when located on the same site with public or private schools or churches;

(8) Foster care home, 24-hour;

(9) Golf courses, private or public, including clubhouse, accessory driving range, pitch and putt courses except the following minimum conditions are required:

(a) A building or structure shall maintain a distance of not less than 50 feet from an exterior boundary line that is a common property line with residential property and from a street boundary line;

(b) A service area, a side of which constitutes a common property line with residential property, shall be screened from such property line by the erection and maintenance on such common property line of a solid wall or view-obscuring fence or hedge not less than five or more than six feet in height;

(c) No required yard or open space on the premises shall be used to provide parking spaces for cars or vehicles;

(d) Where property devoted to these purposes is bounded by a street, then on a street property line, no entrance-exit facilities

for automobiles shall be located closer than 100 feet to a street intersection;

(10) Libraries (publicly operated);

(11) Parks, publicly owned and operated, except the following minimum conditions are required:

(a) No bleachers or stadiums are permitted if the site is less than 10 acres, and no public amusement devices for hire are permitted;

(b) Lights provided to illuminate a building or recreational area shall be so arranged as to reflect the light away from a lot upon which a dwelling unit is located;

(c) A building or structure or service yard on the site shall maintain a distance not less than 50 feet from a property line that is a common property line with residential property and from a public street;

(12) Public utility facilities:

(a) Public utility distribution permitted by DMMC 18.36.140 (Public utilities – Distribution) is not affected by this section;

(b) Public utility facilities necessary for the transmission and distribution of services for the area when the facilities are located underground below the natural grade of the site, except that surface-mounted transformers, telephone terminals, and metering devices less than five feet in height required in connection with underground services are permitted above ground;

(c) Public utilities facilities, such as but not limited to telephone exchanges, sewage or water pumping stations, electrical distribution substations, water storage reservoirs or tanks necessary for distribution, but not including business offices, warehousing, storage buildings or yards, service yards, sewage treatment plants or bulk gas storage or the like, are permitted above ground, subject to the following minimum standards:

(i) Any equipment or structure except architectural screens and fences shall observe a distance of one foot for each one foot the equipment or structure rises above the grade but in no case less than 20 feet from a property line that is a common property line with a street, alley, or with residential property;

(ii) When security fences are used, they shall be supplemented with a Type II landscaping strip so as to minimize the industrial character of such fences;

(iii) Public utility facilities shall be landscaped as required in DMMC 18.41.300 (Public or institutional uses);

(iv) When the facility includes bulky structures such as water towers or standpipes, the landscaping shall include either existing or planted trees of such size as will partially screen and effectively break up the massive appearance of such structures;

(v) Landscaping shall be planted according to industry standards and chapter 18.41 DMMC, Article II (General landscaping requirements). The landscaping will be maintained in good condition at all times. Landscaping shall be planted as a yard improvement at or before the time of completion of the first structure or within a reasonable time thereafter considering weather and planting conditions;

(vi) Site plans, elevation and landscape plans shall be submitted and approved by the building department prior to the issuance of a building permit. The building department may require the posting of a surety bond guaranteeing to the city the installation and improvement of the site in accordance with the approved screening and landscape plans in an amount estimated to be equal to the cost of such screening and landscaping;

(13) Recreational facilities, community and noncommercial, including clubhouse facilities, subject to the issuance of a conditional use permit, except the following minimum conditions are required:

(a) A solid wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height shall be erected and maintained on any exterior boundary line that is a common property line with residential property, except that on a portion of the common property line constituting the depth of the required front yard on the adjoining residential property such wall, fence, or hedge shall be not less than 36 inches nor more than 42 inches in height. Wherever a six-foot wall, fence, or hedge is permitted, open wire mesh screens may be erected to heights greater than six feet where needed for protective purposes;

(b) A building or structure on the site shall maintain a distance not less than 25 feet from any abutting residential property;

(c) Lights provided to illuminate a building or recreational area shall be so arranged as to reflect the light away from a lot upon which a dwelling unit is located;

(d) The site shall be located upon, or have adequate access to a public thoroughfare;

(14) Schools, elementary, junior high, middle, and high, and community colleges, public and private; provided, the following minimum conditions are required:

(a) No less than the following minimum site areas shall be provided for public schools:

(i) For elementary schools, five acres;

(ii) For junior high or middle schools, 10 acres;

(iii) For senior high schools, 15 acres;

(iv) For community colleges, 20 acres;

(b) For private elementary, junior high or middle, and senior high schools, the minimum site area shall be three acres. These private schools shall be approved by the State Board of Education;

(c) Buildings or structures on the site shall maintain all yards required in the zone in which the site is located as identified on the zoning map;

(d) Buildings and structures shall maintain a distance not less than 30 feet from a property line that is a common property line with residential property;

(e) Buildings, including accessory buildings and structures, shall not cover more than 40 percent of the area of the site;

(f) Renovation, rehabilitation, or construction of schools, both public and private, shall be processed as a Type II land use action;

(15) *(Repealed by Ord. 584);*

(16) Planned unit development as provided in chapter 18.52 DMMC (Planned Unit Development);

(17) Unclassified uses as provided in chapter 18.32 DMMC (Unclassified Uses);

(18) Home occupation, except the following minimum conditions are required:

(a) Occupation shall be conducted entirely within the dwelling and not in an accessory building, except for a bona fide garage;

(b) Such use does not involve construction features not customary or incidental in a dwelling;

(c) The entrance to the area used for the home occupation shall be only from an entrance customary to a residential use and not exceeding four feet in width at its opening;

(d) There shall be no signs related to the home occupation or other exterior evidence of the occupation being conducted within the dwelling, including functional evidence;

(e) Such home occupation is approved by the city manager, the criteria for such approval to be whether such home occupation will adversely affect the residential qualities of the location in which it will operate. Without limitation, factors for such decision may be size of building, parking, potential noise, potential nuisance, potential traffic, and the like;

(f) The decision of the city manager may be appealed to the hearing examiner by filing a written notice of appeal with the city clerk within 10 days of the mailing of the notification of denial. The appeal is heard as provided in the hearing examiner code, except the decision of the hearing examiner is final and is not appealable to the city council. The decision of the hearing examiner is appealable by filing a land use petition with the King County superior court in accordance with chapter 36.70C RCW, as presently constituted or as may be subsequently amended;

(g) Should a business license be granted and should the nature of the business thereafter acquire features that may have resulted in a denial of a business license in the first instance, the city manager shall have authority to revoke the business license and the provisions codified in DMMC 5.04.020 (License required – Transfer prohibited), 5.04.030 (Licenses – Fees – Appeal), 5.04.060 (License revocation – Appeal), 5.04.070 (Renewal – Appeal), and 5.04.090 (Reasons for enactment of chapter) shall become effective;

(h) Motor vehicle repair operations are prohibited;

(19) The keeping of horses or cattle for private use only shall be permitted in any residential zone, except the following minimum conditions are required:

(a) The minimum area of land shall not be less than one acre, in which area the animal shall be restrained or controlled in such a manner that the animal cannot freely leave the premises;

(b) Not more than one horse or one cow for each one-half acre of the total site area is permitted;

(c) To restrain an animal from causing damage to adjacent property, the owner of that property where animals are to be kept shall be responsible to erect and maintain an animal-control fence no closer than five feet from the adjacent property line;

(d) Stables, corrals, exercise yards, or rings shall not be located closer than 35 feet to any boundary property line or closer than 45 feet to a building containing a dwelling unit or accessory living quarters on the same premises; and there shall be no open-air storage of hay, straw, shavings, or similar organic materials closer than 35 feet to any boundary property line or closer than 45 feet to any dwelling unit or accessory living quarters on the same premises;

(e) A person keeping horses or cattle in a residential zone under the provisions of this section is required to file a declaration of ownership form with the city clerk. The declaration of ownership form shall be specified by the city clerk and is filed without fee. The declaration of ownership form shall provide the name and address of the legal owner of the property, the legal description of the property, the name and address of the owner of the horse or cow if the horse or cattle owner is not the legal owner of the property;

(20) Adult family homes, subject to the following conditions:

(a) The adult family home is licensed as an adult family home by the Department of Social and Health Services of the state of Washington or successor agency; and

(b) The adult family home shall meet city licensing, zoning, building, housing, and fire regulations. [Ord. 1282 § 1, 2001: Ord. 1237 §§ 3, 4, 1999; Ord. 1174 § 60, 1996; Ord. 1106 § 5, 1994: Ord. 1100 § 1, 1994: Ord. 806 § 2, 1989; Ord. 793 §§ 5, 6, 1989; Ord. 628 § 2, 1985; Ord. 584 § 7(part), 1983; Ord. 557 § 1, 1983; Ord. 532 § 10, 1981; Ord. 463 § 1, 1979; Ord. 445 § 2, 1978; Ord. 338 § 1, 1973; Ord. 295 § 2, 1971; Ord. 255 § 2(part), 1969; Ord. 175 §§ 1(24.08.020), 5, 6, 1964.]

18.08.025 Hazardous substances.

(1) No use permitted in this chapter, with the exception of public utility and service facilities, shall store any hazardous substance, except that for the purposes of this chapter the following substances shall be exempt:

(a) Heating oil stored in an underground tank sufficiently contained so as to preclude soil and ground water contamination;

(b) Gasoline stored in an approved Underwriters Laboratory container;

(c) Prepackaged retail quantities of fertilizers, pesticides, and auto and home care products only for home and personal use.

(2) Failure to comply with any of the requirements of this section shall be deemed a violation and shall result in enforcement by civil penalty as set forth in DMMC 18.72.060. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 757 § 7, 1988.]

18.08.030 Lot area.

(1) In recognition of the variations in topographical conformation and geographical relationships of Des Moines and the advantages that can attach to consideration of health, safety, and general welfare and the amenities of living which naturally relate to the areas devoted to residential and related purposes, there are established in the single-family residential zone four minimum required lot area standards with respect to each of which differ-

ent related yards and open spaces are required as set forth in this chapter and, as to location, are identified on the zoning map by the designations RS-15,000, RS-9,600, RS-8,400, RS-7,200, and RS-4,000:

(a) The minimum required area of a lot in an area designated as RS-15,000 shall be 15,000 square feet; provided, however, in the geographic area described as follows:

Property located in the S.W. 1/4 of Section 17, T22N, R4E, W.M. The real property is enclosed by the following boundaries: west of the western margin of Marine View Drive, north of the northern margin of S. 240th Street, east of the Puget Sound East Passage O.H.W., and south of the north line of the S.E. 1/4 of the S.W. 1/4 of said section as recorded in King County, Washington records. A lot containing a minimum area of 25,000 square feet may be subdivided into no more than two lots, each containing a minimum area of 12,500 square feet, provided sanitary sewer service is available to the lot.

(b) The minimum required area of a lot in an area designated as RS-9,600 shall be 9,600 square feet.

(c) The minimum required area of a lot in an area designated as RS-8,400 shall be 8,400 square feet.

(d) The minimum required area of a lot in an area designated as RS-7,200 shall be 7,200 square feet.

(e) The minimum required area of a lot in an area designated as RS-4,000 shall be 4,000 square feet.

(2) In a multiple-lot subdivision containing four or more lots, the minimum lot area shall be deemed to have been met if the average lot area is not less than the minimum lot area requirement of the zone in which the property is located as identified on the zoning map. In computing the average square foot area of lots in a subdivision not more than 25 percent of the number of lots may contain an area less than the prescribed minimum for the zone, but in no case shall a lot contain less area than as set forth in the following:

(a) In RS-15,000, 13,500 square feet of lot area;

(b) In RS-9,600, 8,640 square feet of lot area;

(c) In RS-8,400, 7,560 square feet of lot area;

(d) In RS-7,200, 6,400 square feet of lot area;

(e) In RS-4,000, 3,600 square feet of lot area; and

(3) Provided further, that for lots containing more than the minimum lot area required for the zone in which the property is located, not more than the following areas of such lots may be credited in determining the average lot area:

(a) In RS-15,000, 16,500 square feet of lot area;

(b) In RS-9,600, 10,560 square feet of lot area;

(c) In RS-8,400, 9,240 square feet of lot area;

(d) In RS-7,200, 7,920 square feet of lot area;

(e) In RS-4,000, 4,400 square feet of lot area. [Ord. 1397 § 3, 2007: Ord. 1237 §§ 3, 4, 1999; Ord. 858 § 1, 1990: Ord. 175 §§ 1(24.08.030), 7, 1964.]

18.08.040 Lot area per dwelling unit.

(1) The lot area per dwelling unit shall be no less than the minimum area of a lot as required for the zone in which the property is located as identified on the zoning map, except that in multiple lot subdivisions approved subsequent to August 3, 1964, the lot area per dwelling unit for each individual lot shall be the area of the individual lots conforming to the approved subdivision.

(2) In the case of a permitted duplex, the lot area per dwelling unit shall be not less than one-half of the minimum required area of the lot. If a lot has less than 7,200 square feet, and was of record on August 3, 1964, the lot area per dwelling unit for a duplex shall be not less than 3,000 square feet. [Ord. 1237 § 3, 1999; Ord. 1197 § 25, 1997; Ord. 175 § 1(24.08.040), 1964.]

18.08.050 Lot width.

Every lot in a single-family residential zone shall maintain a width of not less than the following:

(1) The minimum width of a lot in an area designated as RS-15,000 – 80 feet;

(2) The minimum width of a lot in an area designated as RS-9,600 – 75 feet;

(3) The minimum width of a lot in an area designated as RS-8,400 – 70 feet;

(4) The minimum width of a lot in an area designated as RS-7,200 – 60 feet;

(5) The minimum width of a lot in an area designated as RS-4,000 – 40 feet. [Ord. 1397 § 4, 2007: Ord. 1237 § 4, 1999; Ord. 175 §§ 1(24.08.050), 8, 1964.]

18.08.060 Front yard.

Every lot in a single-family residential zone shall have a front yard with a depth of not less than 20 feet. [Ord. 1237 § 4, 1999; Ord. 255 § 2(part), 1969: Ord. 175 § 1(24.08.060), 1964.]

18.08.070 Side yard.

(1) In a single-family residential zone every lot shall have a side yard on each side of the lot.

(2) For lots 60 feet or more in width, the side yard shall have a width of not less than five feet on one side and 10 feet on the other side.

(3) For lots less than 60 feet in width, all side yards shall have a width of not less than five feet. [Ord. 1237 § 4, 1999; Ord. 1182 § 1, 1997; Ord. 255 § 2(part), 1969: Ord. 175 § 1(24.08.070), 1964.]

18.08.075 Rear yard.

(1) In a single-family residential zone every lot type except through lots shall have a rear yard.

(2) For lots 6,400 square feet or more in area, the rear yard shall have a depth of not less than 20 feet.

(3) For lots less than 6,400 square feet in area, the rear yard shall have a depth of not less than 10 feet. [Ord. 1237 § 4, 1999; Ord. 1182 § 2, 1997; Ord. 255 § 2(part), 1969: Ord. 175 § 1(24.08.075), 1969.]

18.08.080 Height.

In a single-family residential zone no residential building or structure shall exceed a height of 30 feet. [Ord. 1237 § 4, 1999; Ord. 1188 § 1, 1997; Ord. 175 §§ 1(24.08.080), 9, 1964.]

18.08.090 Permissible lot coverage.

(1) In a single-family residential zone all buildings and structures shall not cover more of the lot than the maximum lot coverage requirements provided in this section.

(2) The maximum lot coverage requirements provided in this section shall not apply to open areas for on-site parking and private swimming pools.

(3) For lots 6,400 square feet or more in area, maximum lot coverage shall be 35 percent of lot area.

(4) For lots less than 4,480 square feet in area, maximum lot coverage shall be 50 percent of lot area.

(5) For lots 4,480 to 6,399 square feet in area, maximum lot coverage shall be 2,240 square feet. [Ord. 1237 § 4, 1999; Ord. 1182 § 3, 1997; Ord. 175 § 1(24.08.090), 1964.]

18.08.100 Placement of buildings and structures.

Placement of buildings and structures on any lot in a single-family residential zone shall conform to the following:

(1) Interior Lots.

(a) Any building any portion of which contains a dwelling unit or accessory living quarters shall not be located closer to any property line than allowed by the yard requirements of this chapter;

(b) The distance between a building containing a dwelling unit or accessory living quarters and any other buildings on the same lot shall be not less than 10 feet;

(c) On the rear third of a lot accessory buildings not containing accessory living quarters may be built on the lot side lines and the lot rear line; provided, not less than 10 feet of the lot rear line shall be free and clear of buildings; and provided further, if the lot rears upon an alley, a garage with a vehicular entrance from the alley shall maintain a distance of not

less than 15 feet from the centerline of the alley.

(2) Corner Lots and Reverse Corner Lots.

(a) Except as specified below, any building containing a dwelling unit or accessory living quarters and any other building on the same lot shall observe a distance from any lot side line of five feet from one side and 10 feet from the side street side and the rear property line specified by this chapter;

(b) The distance between a building containing a dwelling unit or accessory living quarters and any other buildings on the same lot shall be not less than 10 feet;

(c) On the rear third of a corner lot accessory buildings not containing accessory living quarters may be built on the lot interior side line and the lot rear line; provided, if the lot rears upon an alley a garage with a vehicular entrance from the alley shall maintain a distance not less than 15 feet from the centerline of such alley;

(d) On the rear third of a reverse corner lot accessory buildings not containing accessory living quarters may be built to the lot interior side line, but no building shall be erected closer to the lot rear line than five feet unless an alley intervenes, in which case accessory buildings may be built to the lot rear line unless the accessory building is a garage with a vehicular entrance directly from the alley, in which case such building shall maintain a distance of not less than 15 feet from the centerline of the alley;

(e) In all cases the width of the required side yard on the side street side shall be observed. [Ord. 1237 § 4, 1999; Ord. 1182 § 4, 1997; Ord. 255 § 2(part), 1969; Ord. 175 §§ 1(24.08.100), 10, 1964.]

18.08.110 Accessory living quarters (ALQ).

(1) Only one ALQ is allowed per residential lot.

(2) The fee owner(s) of the property must physically reside in either the primary single-family dwelling or the accessory unit. At no time shall the ALQ and the primary single-family dwelling be rented simultaneously.

(3) The ALQ shall be designed so that the appearance preserves or complements the architectural design and style of the primary single-family residence.

(4) ALQs shall be accessed either through the entrance of the primary dwelling unit or an additional side or rear entrance.

(5) The ALQ must not be less than 350 square feet of living space. Accessory living quarters shall not exceed 800 square feet if they are: (a) detached from the primary single-family dwelling; (b) created through an addition; or (c) designed into a new structure at the time of construction. For ALQs created within an existing single-family residence, the square footage limitation on an ALQ shall be no more than 35 percent of the total square footage of the primary dwelling.

(6) To gain approval for an ALQ, a property owner shall file a completed ALQ development permit application, sign an affidavit of owner occupancy, provide an additional form of documentation such as a driver's license or voter registration record, and apply for a building permit for necessary remodeling or construction. Falsely certifying owner occupancy or failure to comply with the terms of the ALQ land use application approval shall result in the loss of ALQ registration and certificate of occupancy.

(7) The owner occupancy affidavit shall be recorded and filed as a deed restriction with the King County recorder before a certificate of occupancy shall be issued by the Des Moines building official. [Ord. 1378 § 3, 2006.]

Chapter 18.10

RA-3,600 RESIDENTIAL: ATTACHED TOWNHOUSE AND DUPLEX 3,600 ZONE

Sections

18.10.010 Purpose of zone.

The principal objective and purpose to be served by this zone and its application is to implement the City of Des Moines Comprehensive Plan by permitting a limited increase in population density in those areas to which this zone applies by permitting duplexes or attached, townhouse dwellings on individual lots. Furthermore, it is the objective and purpose of this chapter to provide development regulations that promote a desirable family living environment by establishing a minimum lot area and yards and open spaces. A related consideration is to make it possible to more efficiently and economically design and install all physical public service facilities in terms of size and capacity to adequately and permanently meet the needs resulting from a defined intensity of land use. [Ord. 1237 § 3, 1999; Ord. 1197 § 6, 1997; Ord. 175 § 1(24.10.010), 1964.]

18.10.020 Permitted uses.

In an RA-3,600 zone only the following uses are permitted and as specifically provided in and allowed by this chapter, subject to the provisions and exceptions set forth in this title:

(1) Any use permitted in a single-family residential zone; provided, all such uses shall conform to the conditions set forth for each in the single-family residential zone, except that for dwellings the development regulations required by this zone shall apply;

(2) A duplex. If only a single-family dwelling existed on a lot on August 3, 1964, any additional dwelling unit shall be attached to and made a part of the building containing the existing dwelling unit;

(3) Townhouse developments with no more than one townhouse dwelling per lot;

(4) Accessory buildings, structures, and uses as set forth in the single-family residential zone, and under the same conditions set forth for each therein;

(5) Planned unit development as provided in chapter 18.52 DMMC;

(6) Unclassified uses as provided in chapter 18.32 DMMC. [Ord. 1237 §§ 3, 4, 1999; Ord. 1197 § 7, 1997; Ord. 584 § 7(part), 1983; Ord. 557 § 2, 1983; Ord. 255 § 2(part), 1969; Ord. 248 § 1, 1969; Ord. 175 § 1(24.10.020), 1964.]

18.10.025 Hazardous substances.

(1) No use permitted in this chapter, with the exception of public utility and service facilities, shall store any hazardous substance, except that for the purposes of this chapter the following substances shall be exempt:

(a) Heating oil stored in an underground tank sufficiently contained so as to preclude soil and ground water contamination;

(b) Gasoline stored in an approved Underwriters Laboratory container;

(c) Prepackaged retail quantities of fertilizers, pesticides, and auto and home care products only for home use.

(2) Failure to comply with any of the requirements of this section shall be deemed a violation and shall result in enforcement by civil penalty as set forth in DMMC 18.72.060. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 757 § 8, 1988.]

18.10.030 Application and review process for townhouse developments.

(1) A subdivision or short subdivision shall be required for all townhouse developments so that individual townhouse dwellings

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are located on separate lots.

(2) Townhouse developments containing four or fewer lots shall comply with the applicable provisions of this title and chapter 17.12 DMMC (Short Subdivisions) or chapter 17.20 DMMC (Modified Subdivisions and Short Subdivisions).

(3) Townhouse developments containing five or more lots shall comply with the applicable provisions of this title and chapter 17.16 DMMC (Subdivisions), or chapter 17.20 DMMC (Short Subdivisions), or chapter 18.52 DMMC (Planned Unit Development).

(4) In addition to the application materials specified by chapter 17.40 (Miscellaneous Provisions), applications for townhouse developments shall include the following:

(a) Site plan depicting site and lot boundaries, abutting streets, interior public and private streets, and off-street parking areas, sidewalks, open spaces, recreation facilities, solid waste collection areas, drainage systems, and building locations and setbacks.

(b) Landscaping plan.

(c) Typical building elevations including the exterior architectural design features and materials.

(d) Proposed topography indicated by contours at two-foot intervals. If the proposed townhouse development has slopes that exceed 15 percent, five-foot contour intervals may be used in those areas. [Ord. 1197 § 8, 1997.]

18.10.040 Dimensional standards.

(1) Lot Area.

(a) Except as provided below, the minimum required lot area shall be 7,200 square feet. Within a multiple lot subdivision the minimum lot area shall be deemed to have been met if the average lot area is not less than 7,200 square feet. In computing the average area of lots in a subdivision not more than 25 percent of the number of lots may contain an area less than 7,200 square feet and in no case shall a lot contain less than 6,400 square feet of area. For lots containing more than 7,200 square feet of area not more than 8,000 square feet of area may be credited in determining the average.

(b) The minimum required area for a townhouse development shall be 7,200 square feet. Within a townhouse development, internal lots for the purpose of individual ownership of dwellings with undivided interest in the common areas and facilities may be less than 7,200 square feet in area.

(2) Lot Area Per Dwelling Unit.

(a) For duplexes, the lot area per dwelling unit shall not be less than 3,600 square feet. Within multiple lot subdivisions where lots contain an area less than 7,200 square feet but not less than 6,400 square feet, the lot area per dwelling unit shall be one-half of the area of the lot.

(b) For townhouse developments, the overall lot area per dwelling unit shall not be less than 3,600 square feet. Within a townhouse development, internal lots for the purpose of individual ownership of dwellings with undivided interest in the common areas and facilities may be less than 3,600 square feet in area.

(c) In no case shall residential density exceed 12 dwelling units per acre. For properties where the Greater Des Moines Comprehensive Plan specifies a residential density less than 12 units per acre, development upon that property shall not exceed the residential density specified by the Greater Des Moines Comprehensive Plan.

(3) Lot Width.

(a) Except as provided below, every lot in an RA-3,600 zone shall have a width of not less than 60 feet.

(b) Every townhouse development shall have a width of not less than 60 feet. Within a townhouse development, internal lots that provide for individual ownership of dwellings with undivided interest in the common areas and facilities may have a width of less than 60 feet.

(4) Front Yard.

(a) Except as provided below, every lot shall have a front yard with a depth of not less than 20 feet.

(b) Within a townhouse development, the following front yard requirements shall apply:

(i) A front yard not less than 20 feet in depth shall be provided adjacent to the perimeter lot front line of a townhouse development. The community development director shall determine which lot perimeter lines are lot front lines.

(ii) Every internal lot shall have a front yard with a depth of not less than 10 feet. This provision shall not apply where a 20-foot front yard is provided as specified by subsection (i) above and a combined front yard 30 feet in depth would be required.

(iii) For lots containing a dwelling and on-site parking, on-site parking shall not be located closer than 20 feet from the lot front line.

(5) Side Yard.

(a) Except as provided below, every lot shall have a side yard on each side of the lot. The side yards shall have a width of not less than five feet on one side and 10 feet on the other side.

(b) Within a townhouse development, the following side yard requirements shall apply:

(i) A side yard not less than 10 feet in depth shall be provided adjacent to the perimeter lot side lines of a townhouse development. The community development director shall determine which perimeter lot lines are side lot lines. There may be no perimeter lot side lines.

(ii) Except where townhouse dwellings are attached, every internal lot shall have a side yard of not less than five feet.

(iii) Every internal corner lot shall have a side yard on the street side of the lot. The side yard adjacent to the street side line shall have width of not less than 10 feet.

(6) Rear Yard.

(a) Except as provided below, every lot except through lots shall have a rear yard with a depth of not less than 20 feet.

(b) Within a townhouse development, the following rear yard requirements shall apply:

(i) A rear yard not less than 10 feet in depth shall be provided adjacent to the perimeter lot rear line of a townhouse development. The community development director shall determine which lot perimeter lines are rear lot lines. There may be no perimeter lot rear lines.

(ii) Every internal lot except through lots shall have a rear yard with a depth of not less than 10 feet.

(7) Placement of Buildings.

(a) The distance between a building containing one or more dwelling units or accessory living quarters and any other building shall be not less than 10 feet.

(b) On the rear third of an interior lot accessory buildings not containing accessory living quarters may be built to the lot side lines and the lot rear line; provided, not less than 10 feet of the lot rear line shall be free and clear of buildings; and provided further, if the lot rears upon an alley, a garage with a vehicular entrance from the alley shall maintain a distance of not less than 15 feet from the centerline of the alley.

(c) On the rear third of a corner lot accessory buildings not containing accessory living quarters may be built to the lot interior side line and the lot rear line; provided, if the lot rears upon an alley a garage with a vehicular entrance from the alley shall maintain a distance not less than 15 feet from the centerline of such alley;

(d) On the rear third of a reverse corner lot accessory buildings not containing accessory living quarters may be built to the lot interior side line, but no building shall be erected closer to the lot rear line than five feet unless an alley intervenes, in which case accessory buildings may be built to the lot rear line unless the accessory building is a garage with a vehicular entrance directly from the alley, in which case such building shall maintain a distance of not less than 15 feet from the centerline of the alley.

(e) In all cases a 10-foot side yard adjacent to a street side line shall be maintained.

(8) Height. No building or structure may exceed a height of 30 feet.

(9) Lot Coverage.

(a) Except as provided below and for churches and schools which shall conform to the lot coverage limitations provided by

DMMC 18.08.020 (Permitted uses), all buildings, including accessory buildings and structures but not including any open areas used to provide parking spaces and private swimming pools on residential lots, shall not cover more than 35 percent of the area on the lot.

(b) Within a townhouse development, the maximum permitted lot coverage shall be 50 percent of the area of the lot. [Ord. 1197 § 9, 1997.]

18.10.050 General site design requirements.

(1) Dwellings Per Lot. Except for one duplex on one lot, each dwelling shall be located on a separate lot with no lot having more than one dwelling.

(2) Walkways. Paved pedestrian walkways shall be provided on-site on newly developed properties or buildings materially remodeled, enlarged, or repaired to the extent of 50 percent of the market value as specified below:

(a) Pedestrian walkways shall be provided at or around buildings of sufficient extent to provide safe pedestrian passage between principal building entrances and the public sidewalk(s);

(b) Walkways shall be differentiated from vehicular circulation or vehicular parking areas as approved by the community development director;

(c) Walkways shall conform with all applicable provisions of chapter 51-30 WAC (Barrier-Free Facilities), as presently constituted or as may be subsequently amended; and

(d) Lighting shall be provided where stairs, curbs, ramps, or abrupt changes in walkway direction occur.

(3) Parking.

(a) All uses shall conform to the off-street parking provisions uses set forth by chapter 18.44 DMMC (Loading Areas and Off-Street Parking).

(b) Within a townhouse development, at least one of the parking spaces required for each dwelling unit shall be provided within an enclosed garage.

(c) Within a townhouse development, required parking for a dwelling may be provided on a different lot than the unit when the right to use that parking is formalized by an easement on the approved and recorded plat.

(4) Vehicular Access.

(a) Vehicular access via paved surfaces shall be provided to all on-site parking areas.

(b) Unless waived by the community development director after consultation with the public works director, one shared driveway shall be allowed for every two townhouse dwellings.

(5) Parks. All townhouse developments shall comply with the park land requirements specified by DMMC 17.36.150 (Parks).

(6) Private, usable open space for each townhouse dwelling shall be provided on the same lot as the townhouse dwelling.

(7) Landscaping. All developments in the RA-3,600 zone shall conform to the landscaping and screening requirements set forth by chapter 18.41 DMMC (Landscaping and Screening). [Ord. 1197 § 10, 1997.]

18.10.060 General building design requirements.

Townhouse developments shall conform to the following building design requirements:

(1) No more than four townhouse dwelling units shall be provided within any building.

(2) Residential buildings shall not exceed 125 feet in length.

(3) The common wall between attached townhouse dwellings shall be located on a lot side line. Attached townhouse dwelling units shall be separated as provided in Title 14 DMMC.

(4) The main entry and the first floor for each townhouse dwelling shall be within three vertical feet of ground level. Basements and daylight basements may be provided below the first floor.

(5) Every townhouse dwelling shall have a separate, individual entry.

(6) Entrances to residential buildings shall include two or more of the following design features: covered porch, covered entry, steps, or recessed or projecting doorway.

(7) Garage doors shall not constitute more than 40 percent of any wall area on a single townhouse dwelling.

(8) Residential building facade modulation shall include all the following:

(a) The maximum wall length without modulation shall be 25 feet.

(b) The sum of the modulation depth and width shall be no less than eight feet. Neither the modulation depth nor the modulation width shall be less than two feet.

(c) Within a residential building containing two townhouses, the front yard setback for individual townhouse dwellings shall vary so that the dwellings do not have the same front yard setback.

(d) Within a residential building contained three or more townhouses, the front yard setback for individual townhouse dwellings shall vary so that no more than two-thirds of the dwellings have the same front yard setback.

(e) Any other technique approved by the community development director or city council that achieves the intent of this section.

(9) Residential buildings and buildings containing parking shall have pitched roofs with a minimum slope of 4:12 over a minimum of 65 percent of the building.

(10) Residential buildings with rooflines exceeding 60 feet in length shall provide roofline variation in accordance with all of the following:

(a) The maximum roof length without variation shall be 30 feet.

(b) The minimum horizontal or vertical offset shall be two feet.

(c) The minimum variation length shall be eight feet.

(d) Roofline variation shall be achieved using one or more of the following methods:

(i) Vertical offset in ridge line.

(ii) Horizontal offset in ridge line.

(iii) Variations in roof pitch.

(iv) Gables.

(v) Any other technique approved by the community development director or city council that achieves the intent of this section.

(11) Every townhouse dwelling shall have recorded with the county auditor a perpetually binding common party wall agreement as a covenant to each deed establishing the rights and obligations of each owner relative to the common party wall and foundation, and providing for the easements for purposes of maintenance and fire protection. Such agreement shall include provisions for upkeep and maintenance of all common areas and facilities such as landscaping, storm water facilities, utilities, park land, or other facilities.

(12) No subdivision or short subdivision of a site containing previously constructed townhouse dwellings shall be allowed unless all common walls meet current building code and fire code requirements for separately-owned townhouse units, and all other requirements of this chapter are satisfied. [Ord. 1197 § 11, 1997.]

Chapter 18.12

RM-2,400 RESIDENTIAL: MULTIFAMILY 2,400 ZONE

Sections

18.12.010 Purpose of zone.

The principal objective and purpose to be served by this zone and its application is to establish areas permitting a greater population density than is allowed in more restrictive zones and at the same time maintain a residential environment consistent with such greater population density. A related consideration is to make it possible to more efficiently and economically design and install all physical public service facilities in terms of size and capacity to adequately and permanently meet needs resulting from a defined intensity of land use. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.12.010), 1964.]

18.12.020 Permitted uses.

In an RM-2,400 zone only the following uses are permitted and as specifically provided in and allowed by this chapter, subject to the off-street parking requirements and the general provisions and exceptions set forth in this title beginning with chapter 18.36 DMMC.

(1) Any use permitted in the RA-3,600 zone; provided, all such uses shall conform to the conditions set forth in the zone in which they are first permitted, except that for dwellings the yards, open spaces and lot coverage established by this zone shall apply;

(2) Multiple dwelling units;

(3) Accessory uses, buildings and structures as set forth in the single-family residential and RA-3,600 zones and subject to conditions set forth for each therein;

(4) Planned unit development as provided in chapter 18.52 DMMC;

(5) Unclassified uses as provided in chapter 18.32 DMMC. [Ord. 1237 §§ 3, 4, 1999; Ord. 1197 § 26, 1997; Ord. 584 § 7(part), 1983; Ord. 557 § 3, 1983; Ord. 255 § 2(part), 1969; Ord. 248 § 2, 1969; Ord. 175 §§ 1(24.12.020), 13, 1964.]

18.12.025 Hazardous substances.

(1) No use permitted in this chapter, with the exception of public utility and service facilities, shall store any hazardous substance, except that for the purposes of this chapter the following substances shall be exempt:

(a) Heating oil stored in an underground tank sufficiently contained so as to preclude soil and ground water contamination;

(b) Gasoline stored in an approved Underwriters Laboratory container;

(c) Prepackaged retail quantities of fertilizers, pesticides, and auto and home care products only for home use.

(2) Failure to comply with any of the requirements of this section shall be deemed a violation and shall result in enforcement by civil penalty as set forth in DMMC 18.72.060. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 757 § 9, 1988.]

18.12.030 Lot area.

The minimum required area of a lot in an RM-2,400 zone shall be 7,200 square feet; provided, that in a multiple lot subdivision approved subsequent to August 3, 1964, the minimum lot area shall be deemed to have been met if the average lot area is not less than 7,200 square feet. In computing the average square foot area of lots in a subdivision not

more than 25 percent of the number of lots may contain an area less than 7,200 square feet but in no case shall a lot contain less than 6,400 square feet. For lots containing more than 7,200 square feet of area not more than 8,000 square feet of area may be credited in determining the average. [Ord. 175 § 1(24.12.030), 1964.]

18.12.040 Lot area per dwelling unit.

In an RM-2,400 zone the lot area per dwelling unit shall be not less than 2,400 square feet. In multiple lot subdivisions approved subsequent to August 3, 1964, where lots contain an area less than 7,200 square feet but not less than 6,400 square feet, the lot area per dwelling unit shall be not less than one-third of the area of the lot. Where a lot contains more than 7,200 square feet of area, there may be one dwelling unit for each 2,400 square feet of lot area in excess of 7,200 square feet of area. In the case of a permitted transitional use, the lot area per dwelling unit shall be not less than 1,800 square feet. [Ord. 175 § 1(24.12.040), 1964.]

18.12.050 Lot width.

Every lot in an RM-2,400 zone shall have a width of not less than 60 feet. [Ord. 175 § 1(24.12.050), 1964.]

18.12.060 Front yard.

Every lot in an RM-2,400 zone shall have a front yard with a depth of not less than 20 feet. [Ord. 255 § 2(part), 1969: Ord. 175 § 1(24.12.060), 1964.]

18.12.070 Side yard.

In an RM-2,400 zone every lot shall have a side yard on each side of the lot which side yard shall have a width of not less than 15 feet. Exceptions:

(1) Structures two stories in height may have side yards of 10 feet in width.

(2) Structures one story in height may have a side yard of five feet from one side and 10 feet from the other side. [Ord. 255 § 2(part), 1969: Ord. 175 § 1(24.12.070), 1964.]

18.12.075 Rear yard.

In an RM-2,400 zone every lot shall have a rear yard with a depth of not less than 20 feet. [Ord. 255 § 2(part), 1969: Ord. 175 § 1(24.12.075), 1964.]

18.12.080 Height.

In an RM-2,400 zone no building or structure shall exceed a height of 35 feet. [Ord. 175 §§ 1(24.12.080), 14, 1964.]

18.12.090 Permissible lot coverage.

All buildings, including accessory buildings and structures but not including private swimming pools or any open areas used to provide parking on residential lots shall not cover more than 50 percent of the area of the lot. [Ord. 175 § 1(24.12.090), 1964.]

18.12.100 Placement of buildings and structures.

Placement of buildings and structures on any lot shall conform to the following:

(1) Interior Lots.

(a) Any building containing one or more dwelling units or accessory living quarters shall observe a distance not less than 15 feet from any lot side line and 20 feet from the rear property line. Exceptions:

(i) Structures two stories in height may observe a distance of not less than 10 feet from any lot side line.

(ii) Structures one story in height may observe a distance of not less than five feet from one lot side line and not less than 10 feet from the other lot side line;

(b) The distance between a building containing one or more dwelling units or accessory living quarters and any other buildings on the same lot shall be not less than 10 feet;

(c) On the rear third of a lot accessory buildings not containing accessory living quarters may be built to the lot side lines and the lot rear line; provided, not less than 10 feet of the lot rear line shall be free and clear of buildings; and provided further, if the lot rears upon an alley a garage with a vehicular entrance from the alley shall maintain a distance of not less than 15 feet from the centerline of the alley.

(2) Corner Lots and Reverse Corner Lots.

(a) Any building containing a dwelling unit or accessory living quarters and any other building on the same lot shall observe a distance of not less than 15 feet from any lot side line and 20 feet from the rear property line. Exceptions:

(i) Structures two stories in height may observe a distance of not less than 10 feet from any lot side line;

(ii) Structures one story in height may observe a distance of not less than five feet from one side line and not less than 10 feet from the side street side;

(b) The distance between a building containing one or more dwelling units or accessory living quarters and any other buildings on the same lot shall be not less than 10 feet;

(c) On the rear third of a corner lot accessory buildings not containing accessory living quarters may be built to the lot interior side line and the lot rear line; provided, if the lot rears upon an alley a garage with a vehicular entrance from the alley shall maintain a distance of not less than 15 feet from the centerline of such alley;

(d) On the rear third of a reverse corner lot accessory buildings not containing accessory living quarters may be built to the lot interior side line, but no building shall be erected closer than five feet to the property line of any abutting lot to the rear unless an alley intervenes, in which case accessory buildings may be built to the lot rear line unless the accessory building is a garage with a vehicular entrance directly from the alley, in which case such building shall maintain a distance of not less than 15 feet from the centerline of the alley;

(e) In all cases the width of the required side yard on the side street side shall be observed. [Ord. 255 § 2(part), 1969; Ord. 175 §§ 1(24.12.100), 15, 1964.]

18.12.110 Recreation area required.

On-site recreation area shall be provided as specified in chapter 18.45 DMMC. [Ord. 901 § 2, 1991.]

Chapter 18.14

RM-1,800 RESIDENTIAL: MULTIFAMILY 1,800 ZONE

Sections

18.14.010 Purpose of zone.

The principal objective and purpose to be served by this zone and its application is to establish areas permitting a greater population density than is allowed in more restrictive zones and to permit the providing of accommodations for those who desire to live in a residential atmosphere without the necessity to individually maintain a dwelling unit. A related consideration is to make it possible to more efficiently and economically design and install all physical public service facilities in terms of size and capacity to adequately and permanently meet needs resulting from a defined intensity of land use. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.14.010), 1964.]

18.14.020 Permitted uses.

In an RM-1,800 zone only the following uses are permitted and as specifically provided in and allowed by this chapter, subject to the off-street parking requirements and the general provisions and exceptions set forth in this title beginning with chapter 18.36 DMMC.

(1) Any use permitted in an RM-2,400 zone; provided, all such uses shall conform to the conditions set forth in the zone in which they are first permitted, except that for dwell-

ings the yards, open spaces, and lot coverage permitted by this zone shall apply;

(2) Accessory uses, buildings, and structures set forth in the single-family residential zone except that where more than one dwelling unit is located on the premises private garages shall be limited to accommodating not more than two cars for each dwelling unit, and a boathouse or hangar shall be limited to accommodating not more than one private noncommercial pleasure craft for each dwelling unit on the premises;

(3) Multiple dwelling units;

(4) Open air public parking areas for the parking of automobiles without monetary charge except when operated by, or for, a public parking authority, when the property upon which it is located in an RM-1,800 zone abuts upon a lot zoned for commercial purposes whether or not an alley intervenes; provided:

(a) Access to such parking lot shall be only from the commercial or business park zoned property it is intended to serve, or from an alley if there is one;

(b) In either such case there shall be installed along the entire length of all street property lines of the lot used for such public parking purposes a continuous fence, hedge, or wall five feet in height located no closer to the street property line than 10 feet and the area between the fence and the street lot line shall be landscaped and maintained with grass, hardy evergreen shrubs, or ground cover;

(c) A solid wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height shall be erected and maintained on any exterior boundary line which is a common property line with residential property when such residential property is used for residential purposes;

(d) The parking area shall be developed as required, and no such area shall be used for an automobile, trailer, or boat sales area or for the accessory storage of such vehicles;

(5) *(Repealed by Ord. 584)*;

(6) Planned unit development as provided in chapter 18.52 DMMC;

(7) Unclassified uses as provided in chapter 18.32 DMMC. [Ord. 1237 §§ 3, 4, 1999; Ord. 584 § 7(part), 1983; Ord. 557 § 4, 1983; Ord. 255 § 2(part), 1969; Ord. 248 § 3, 1969; Ord. 175 § 1(24.14.020), 1964.]

18.14.025 Hazardous substances.

(1) No use permitted in this chapter, with the exception of public utility and service facilities, shall store any hazardous substance, except that for the purposes of this chapter the following substances shall be exempt:

(a) Heating oil stored in an underground tank sufficiently contained so as to preclude soil and ground water contamination;

(b) Gasoline stored in an approved Underwriters Laboratory container;

(c) Prepackaged retail quantities of fertilizers, pesticides, and auto and home care products only for home use.

(2) Failure to comply with any of the requirements of this section shall be deemed a violation and shall result in enforcement by civil penalty as set forth in DMMC 18.72.060. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 757 § 10, 1988.]

18.14.030 Lot area.

The minimum required area of a lot in an RM-1,800 zone shall be 7,200 square feet; provided, that in a multiple lot subdivision approved subsequent to August 3, 1964, the minimum lot area shall be deemed to have been met if the average lot area is not less than 7,200 square feet. In computing the average square foot area of lots in a subdivision, not more than 25 percent of the number of lots may contain an area less than 7,200 square feet and in no case shall a lot contain less than 6,400 square feet. For lots containing more than 7,200 square feet of area not more than 8,000 square feet of area may be credited in determining the average. [Ord. 175 § 1(24.14.030), 1964.]

18.14.040 Lot area per dwelling unit.

In an RM-1,800 zone the lot area per dwelling unit shall be not less than 1,800 square feet. Where a lot contains more than 7,200 square feet of area, there may be one dwelling unit for each 1,800 square feet of lot area in excess of 7,200 square feet of area. [Ord. 175 § 1(24.14.040), 1964.]

18.14.050 Lot width.

In an RM-1,800 zone every lot shall have a width of not less than 60 feet. [Ord. 175 § 1(24.14.050), 1964.]

18.14.060 Front yard.

In an RM-1,800 zone every lot shall have a front yard with a depth not less than 20 feet. [Ord. 255 § 2(part), 1969: Ord. 175 § 1(24.14.060), 1964.]

18.14.070 Side yard.

In an RM-1,800 zone every lot shall have a side yard on each side of the lot which side yard shall have a width of not less than 15 feet. Exceptions:

(1) Structures two stories in height may have side yards of 10 feet in width;

(2) Structures one story in height may have a side yard of five feet from one side and 10 feet from the other side. [Ord. 255 § 2(part), 1969: Ord. 175 § 1(24.14.070), 1964.]

18.14.075 Rear yard.

In an RM-1,800 zone every lot shall have a rear yard with a depth of not less than 20 feet. [Ord. 255 § 2(part), 1969: Ord. 175 § 1(24.14.075), 1964.]

18.14.080 Height.

In an RM-1,800 zone no building or structure shall exceed a height of 35 feet. [Ord. 175 §§ 1(24.14.080), 16, 1964.]

18.14.090 Permissible lot coverage.

If a dwelling, rest home, nursing home, or convalescent home is involved, all buildings, including accessory buildings and structures but not including private swimming pools on residential lots or any open areas used to provide parking space, shall not cover more than 50 percent of the area of the lot. If a dwelling or rest home, nursing home, or convalescent home is not involved, then the maximum permissible lot coverage shall not apply. [Ord. 175 § 1(24.14.090), 1964.]

18.14.100 Placement of buildings and structures.

Placement of buildings and structures on any lot in an RM-1,800 zone shall conform to the following:

(1) Interior Lots.

(a) Any building containing one or more dwelling units or accessory living quarters shall observe a distance of not less than 15 feet from any lot side line and 20 feet from the rear property line. Exceptions:

(i) Structures two stories in height may observe a distance of not less than 10 feet from any lot side line;

(ii) Structures one story in height may observe a distance of not less than five feet from one lot side line and not less than 10 feet from the other lot side line;

(b) The distance between a building containing one or more dwelling units or accessory living quarters and any other buildings on the same lot shall be not less than 10 feet;

(c) On the rear third of a lot accessory buildings not containing accessory living quarters may be built to the lot side lines and the lot rear line; provided, not less than 10 feet of the lot rear line shall be free and clear of all buildings; and provided further, if the lot rears upon an alley, a garage with a vehicular entrance from the alley shall maintain a distance of not less than 15 feet from the centerline of the alley.

(2) Corner Lots and Reverse Corner Lots.

(a) Any building containing a dwelling unit or accessory living quarters and any other building on the same lot shall observe a distance of not less than 15 feet from any lot side line and 20 feet from the rear property line. Exceptions:

(i) Structures two stories in height may observe a distance of not less than 10 feet from any lot side line;

(ii) Structures one story in height may observe a distance of not less than five feet from one lot side line and not less than 10 feet from the side street side;

(b) The distance between a building containing one or more dwelling units or accessory living quarters and any other buildings on the same lot shall be not less than 10 feet;

(c) On the rear third of a corner lot accessory buildings not containing accessory living quarters may be built to the lot interior side line and the lot rear line; provided, if the lot rears upon an alley a garage with a vehicular entrance from the alley shall maintain a distance of not less than 15 feet from the centerline of such alley;

(d) On the rear third of a reverse corner lot accessory buildings not containing accessory living quarters may be built to the lot interior side line, but no building shall be erected closer than five feet to the property line in which case accessory buildings may be built to the lot rear line unless the accessory building is a garage with a vehicular entrance directly from the alley, in which case such building shall maintain a distance of not less than 15 feet from the centerline of the alley;

(e) In all cases the width of the required side yard on the side street side shall be observed. [Ord. 255 § 2(part), 1969; Ord. 175 §§ 1(24.14.100), 17, 1964.]

18.14.110 Recreation area required.

On-site recreation area shall be provided as specified in chapter 18.45 DMMC. [Ord. 901 § 3, 1991.]

Chapter 18.16

RM-900 RESIDENTIAL: MULTIFAMILY 900 ZONE

Sections

18.16.010 Purpose of zone.

The principal objective and purpose to be served by this zone and its application is to establish areas permitting the maximum population density and which also permits uses other than residential, such as medical, dental, and social services and shelter, all for human beings. The uses permitted in this zone relate conveniently and consistently in terms of traffic generated, demands upon public service facilities, and impact upon each other. A related consideration is to make it possible to more efficiently and economically design and install all physical public service facilities in terms of size and capacity to adequately and permanently meet needs resulting from a defined intensity of land use. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.16.010), 1964.]

18.16.020 Permitted uses.

In an RM-900 zone the following uses only are permitted and as specifically provided in and allowed by this chapter, subject to the off-street parking requirements and general provisions and exceptions set forth in this title beginning with chapter 18.36 DMMC:

(1) Any use permitted in an RM-1,800 zone; provided, all such uses shall conform to the conditions set forth in the zone in which they are first permitted except that for dwellings, rest homes, nursing homes, and convalescent homes, the yards, open spaces and lot coverage permitted by this zone shall apply, and day nurseries shall conform to the conditions set forth in the RM-2,400 zone pertaining to such use, except that they need not be in a dwelling unit;

(2) Accessory uses, buildings, and structures as set forth in the single-family residential zone except that where more than one dwelling unit is located on the premises private garages shall be limited to accommodating not more than two cars for each dwelling unit and a boathouse shall be limited to accommodating not more than one private noncommercial pleasure craft for each dwelling unit on the premises;

(3) Apartment hotels;

(4) Hospitals, except mental and alcoholic; provided:

(a) All buildings and structures shall maintain a distance of not less than 45 feet from the property front line and not less than 20 feet from any residential property;

(b) A solid wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height shall be established and maintained on any exterior boundary line which is a common property line with residential property, when such residential property is used for residential purposes; provided, that on any portion of such common property line constituting the depth of the required front yard on the residential property such fence, wall, or hedge shall not be less than 36 inches nor more than 42 inches in height;

(5) Hotels; provided:

(a) Restaurants, cocktail lounges, and specialty shops are permitted accessory uses; provided[1], the floor area devoted to such uses shall not exceed 20 percent of the total floor area and entry to such uses shall be from within the main building;

(b) All buildings and structures shall maintain a distance of not less than 20 feet from any lot in a residential zone;

(c) A solid wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height shall be erected and maintained on any exterior boundary line which is a common property line with residential property when such residential property is used only for residential purposes, except that on any portion of such common property line constituting the depth of the required front yard on the residential property such fence, wall, or hedge shall not be less than 36 inches nor more than 42 inches in height;

(6) Motels; provided:

(a) Restaurants, cocktail lounges, and specialty shops are permitted accessory uses; provided[1], the floor area devoted to such uses shall not exceed 20 percent of the total floor area and entry to such uses shall be from within the main building;

(b) All buildings and structures shall maintain a distance of not less than 20 feet from any lot in a residential zone;

(c) A solid wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height shall be established and maintained on any exterior boundary line which is a common property line with residential property when such residential property is used only for residential purposes, except that on any portion of such common property line constituting the depth of the required front yard on the residential property such fence, wall, or hedge shall not be less than 36 inches nor more than 42 inches in height;

(7) Private clubs and fraternal societies, except those the chief activity of which is a service customarily carried on as a business; provided:

(a) All buildings and structures shall maintain a distance not less than 20 feet from any lot in a residential zone;

(b) A solid wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height shall be erected and maintained on any exterior boundary line

1. Code reviser's note: The wording of this proviso differs from the wording of King County Res. 25789 but conforms to the wording of the codified version which the codifier used as the basis for this zoning code.

which is a common property line with residential property when such residential property is used for residential purposes, except that on that portion of such common property line constituting the depth of the required front yard on the residential property such wall, fence, or hedge shall be not less than 36 inches nor more than 42 inches in height;

(8) Professional offices and medical-dental buildings and clinics as defined in this title; provided:

(a) All buildings and structures shall maintain a distance not less than 20 feet from any lot in a residential zone;

(b) A solid wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height shall be erected and maintained on an exterior boundary line which is a common property line with residential property when such residential property is used for residential purposes, except that on that portion of such common property line constituting the depth of the required front yard on the residential property such wall, fence, or hedge shall be not less than 36 inches nor more than 42 inches in height;

(9) Sanitariums; provided:

(a) All buildings and structures shall maintain a distance not less than 20 feet from any lot in a residential zone;

(b) A solid wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height shall be erected and maintained on any exterior boundary line which is a common property line with residential property when such residential property is used for residential purposes, except that on that portion of such common property line constituting the depth of the required front yard on the residential property such wall, fence, or hedge shall be not less than 36 inches nor more than 42 inches in height;

(10) *(Repealed by Ord. 584)*;

(11) Trailer parks; provided:

(a) The minimum site area for a trailer park shall be not less than three acres;

(b) There shall be at least 2,000 square feet of site area per trailer space;

(c) The property used for a trailer park shall have no access except from a major or secondary street;

(d) Any driveways providing entrance to or exit from the trailer park shall not be closer than 50 feet to a street intersection measured from the street line established by an official control for either of the streets at the intersection;

(e) A solid wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height shall be established and maintained across the full width of the site and such wall, fence, or hedge shall be located on, or to the rear of, the rear line of the required front yard; on corner lots and reverse corner lots such a wall, fence, or hedge shall also be installed and maintained along the side street side of the site, and shall observe the required yard on such side street side;

(f) A solid wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height shall be established and maintained on any exterior boundary line which is a common property line with residential property, except that on any portion of such common property line constituting the depth of the required front yard on the residential property no such fence, wall, or hedge shall be required;

(g) If there are any openings in the required wall, fence, or hedge for driveway purposes, such openings shall not be wider than 30 feet;

(h) No residence shall be permitted on the trailer park site except a residence for the owner or manager of such trailer park;

(i) The trailer park must meet all requirements of the King County health department covering the establishment of mobile home parks;

(j) A surety bond guaranteeing to the city the installation of walls, fences, or hedges required in this title is posted prior to the issuance of any permits to construct the park;

(12) Planned unit development as provided in chapter 18.52 DMMC;

(13) Unclassified uses as provided in chapter 18.32 DMMC. [Ord. 1237 §§ 3, 4,

1999; Ord. 584 § 7(part), 1983; Ord. 557 § 5, 1983; Ord. 175 § 1(24.16.020), 1964.]

18.16.025 Hazardous substances.

(1) No use permitted in this chapter, with the exception of public utility and service facilities, shall store any hazardous substance, except that for the purposes of this chapter the following substances shall be exempt:

(a) Heating oil stored in an underground tank sufficiently contained so as to preclude soil and ground water contamination;

(b) Gasoline stored in an approved Underwriters Laboratory container;

(c) Prepackaged retail quantities of fertilizers, pesticides, and auto and home care products only for home use.

(2) Failure to comply with any of the requirements of this section shall be deemed a violation and shall result in enforcement by civil penalty as set forth in DMMC 18.72.060. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 757 § 11, 1988.]

18.16.028 General design requirements.

All new development and significant redevelopment proposals within the RM-900 zone in the downtown neighborhood, as delineated in the Des Moines comprehensive plan, shall demonstrate substantial compliance, as determined by the planning official, with the adopted Marina District Design Guidelines. The guidelines address design issues related to site planning; height, bulk and scale; architectural elements and materials; pedestrian environment; landscape design; and signs. The guidelines provide objectives and techniques for ensuring that new construction provides lasting benefit to the community; minimizes incompatibility among land uses; and promotes economic investment in the downtown neighborhood. [Ord. 1486 § 2, 2010.]

18.16.030 Lot area.

The minimum required area of a lot in an RM-900 zone shall be 7,200 square feet; provided, that in a multiple lot subdivision approved subsequent to August 3, 1964, the minimum lot area shall be deemed to have been met if the average lot area is not less than 7,200 square feet. In computing the average square foot area of lots in a subdivision, not more than 25 percent of the number of lots may contain an area less than 7,200 square feet and in no case shall a lot contain less than 6,400 square feet. For lots containing more than 7,200 square feet of area not more than 8,000 square feet of area may be credited in determining the average. [Ord. 175 § 1(24.16.030), 1964.]

18.16.040 Lot area per dwelling unit.

In an RM-900 zone the lot area per dwelling unit shall be not less than 900 square feet. Where a lot contains more than 7,200 square feet of area, there may be one dwelling unit for each 900 square feet of lot area in excess of 7,200 square feet of area. [Ord. 175 § 1(24.16.040), 1964.]

18.16.050 Lot width.

In an RM-900 zone every lot shall have a width of not less than 60 feet. [Ord. 175 § 1(24.16.050), 1964.]

18.16.060 Front yard.

In an RM-900 zone every lot shall have a front yard with a depth not less than 20 feet. In the case of key lots and lots which side upon commercially or industrially zoned property, the required front yard depth shall be not less than 15 feet. [Ord. 175 § 1(24.16.060), 1964.]

18.16.070 Side yard.

In an RM-900 zone every lot shall have a side yard on each side of the lot which side yard shall have a width of not less than five feet. [Ord. 175 § 1(24.16.070), 1964.]

18.16.080 Height.

In an RM-900 zone no building or structure shall exceed a height of 35 feet. [Ord. 175 §§ 1(24.16.080), 18, 1964.]

18.16.090 Permissible floor area.

The total permissible floor area to be contained within all buildings on a lot or building site shall not exceed two times the square foot area of the lot. This restriction does not apply to dwelling units when they constitute the only use on the lot. [Ord. 175 § 1(24.16.090), 1964.]

18.16.100 Permissible lot coverage.

If a dwelling, rest home, nursing home, or convalescent home is involved, all buildings, including accessory buildings and structures, but not including private swimming pools on residential lots or open areas used to provide parking space, shall not cover more than 60 percent of the area of the lot. If a dwelling, rest home, nursing home, or convalescent home is not involved, then the maximum permissible lot coverage shall not apply. [Ord. 175 § 1(24.16.100), 1964.]

18.16.110 Placement of buildings and structures.

Placement of buildings and structures on any lot in an RM-900 zone shall conform to the following:

(1) Interior Lots.

(a) Any building any portion of which contains one or more dwelling units or accessory living quarters shall observe a distance of not less than five feet from any lot side line and the lot rear line;

(b) The distance between a building containing one or more dwelling units or accessory living quarters and any other buildings on the same lot shall be not less than 10 feet;

(c) On the rear third of a lot accessory buildings not containing accessory living quarters may be built to the lot side lines and the lot rear line; provided, not less than 10 feet of the lot rear line shall be free and clear of all buildings; and provided further, if the lot rears upon an alley, a garage with a vehicular entrance from the alley shall maintain a distance of not less than 15 feet from the centerline of the alley.

(2) Corner Lots and Reverse Corner Lots.

(a) Any building containing a dwelling unit or accessory living quarters and any other buildings on the same lot shall observe a distance from any lot side line and the lot rear line of five feet;

(b) The distance between a building containing one or more dwelling units or accessory living quarters and any other buildings on the same lot shall be not less than 10 feet;

(c) On the rear third of a corner lot accessory buildings not containing accessory living quarters may be built to the lot interior side line and the lot rear line; provided, if the lot rears upon an alley a garage with a vehicular entrance from the alley shall maintain a distance not less than 15 feet from the centerline of such alley;

(d) On the rear third of a reverse corner lot accessory buildings not containing accessory living quarters may be built to the lot interior side line, but no building shall be erected closer than five feet to the property line of any abutting lot to the rear unless an alley intervenes, in which case accessory buildings may be built to the lot rear line unless the accessory building is a garage with a vehicular entrance directly from the alley, in which case such building shall maintain a distance of not less than 15 feet from the centerline of the alley;

(e) In all cases the width of the required side yard on the side street side shall be observed. [Ord. 175 §§ 1(24.16.110), 19, 1964.]

18.16.115 Recreation area required.

On-site recreation area shall be provided as specified in chapter 18.45 DMMC. [Ord. 901 § 4, 1991.]

18.16.120 Prohibition on reclassification of property to RM-900.

No real property shall be reclassified to a RM-900 zoning designation on or after January 8, 1990; provided, however, this provision shall not apply to any application for zoning reclassification filed prior to December 21, 1989. [Ord. 829 § 1, 1989.]

Chapter 18.18

RM-900A AND RM-900B RESIDENTIAL: MULTIFAMILY 900A ZONE – RM-900A AND RESTRICTED SERVICE ZONE – RM-900B

Sections

18.18.010 Purpose of zones.

The principal objective and purpose to be served by these zones and their application is to establish areas permitting the maximum population density in the RM-900A zone for apartment use only and permit uses other than apartment residential, such as medical, dental, and social services and shelter, all for human beings in the RM-900B zone for restricted services only. The uses permitted in the RM-900B zones relate conveniently and consistently in terms of traffic generated, demands upon public service facilities, and impact upon each other. A related consideration is to make it possible to more efficiently and economically design and install all physical public service facilities in terms of size and capacity to adequately and permanently meet needs resulting from a defined intensity of land use. [Ord. 1237 § 3, 1999; Ord. 255 § 3(part), 1969: Ord. 175 § 1(24.17.010), 1964.]

18.18.020 Permitted uses.

(1) RM-900A Zone. In an RM-900A zone the following uses only are permitted and as specifically provided in and allowed by this chapter, subject to the off-street parking requirements and general provisions and exceptions set forth in this title beginning with chapter 18.36 DMMC:

(a) Single-family dwellings;

(b) Multiple-family dwellings;

(c) The following uses as permitted and restricted in single-family residential zones by DMMC 18.08.020; provided, that any lot coverage restrictions of that section shall be superseded by DMMC 18.18.100:

(i) Accessory buildings and uses;

(ii) Churches;

(ii) Nursery schools, day care centers, or mini-day care programs when located on the same site with public or private schools or churches;

(iv) Foster care home, 24-hour;

(v) Libraries, publicly owned;

(vi) Parks, publicly owned and operated;

(vii) Public utility facilities;

(viii) Recreational facilities, community and noncommercial;

(ix) Schools, elementary, middle, and high and community colleges, public or private;

(x) Home occupations;

(xi) Family day care homes;

(d) Planned unit developments as provided in chapter 18.52 DMMC;

(e) Unclassified uses as provided in chapter 18.32 DMMC.

(2) RM-900B Zone. In an RM-900B zone the following uses only are permitted and as specifically provided in and allowed by this chapter, subject to the off-street parking requirements and general provisions and exceptions set forth in this title beginning with chapter 18.36 DMMC:

(a) Retirement housing;

(b) Nursing homes;

(c) Continuing care retirement communities;

(d) Boarding homes;

(e) The following uses, as permitted and restricted in single-family residential zones by DMMC 18.08.020; provided, that any lot coverage restrictions of that section shall be superseded by DMMC 18.18.100:

(i) Accessory buildings and uses;

(ii) Churches;

(iii) Libraries, publicly owned;

(iv) Parks, publicly owned and operated;

(v) Public utility facilities;

(vi) Recreational facilities, community and noncommercial;

(vii) Schools, elementary, middle, and high, community colleges, public or private;

(f) Nursery schools, day care centers, or mini-day care programs, and respite care facilities when located on the same site with retirement housing, nursing homes, continuing care retirement communities, boarding homes, public or private schools, or churches;

(g) Professional offices and medical-dental buildings and clinics if accessory to retirement housing, nursing homes, continuing care retirement communities, or boarding homes;

(h) Administrative offices, libraries, museums, meeting rooms, and the like developed in conjunction with a fraternal society, subject to the issuance of an unclassified use permit as provided in chapter 18.32 DMMC;

(i) Unclassified uses as provided in chapter 18.32 DMMC. [Ord. 1237 § 4, 1999; Ord. 887 § 6, 1991: Ord. 255 § 3(part), 1969: Ord. 175 § 1(24.17.020), 1964.]

18.18.025 Hazardous substances.

(1) No use permitted in this chapter, with the exception of public utility and service facilities, shall store any hazardous substance, except that for the purposes of this chapter the following substances shall be exempt:

(a) Heating oil stored in an underground tank sufficiently contained so as to preclude soil and ground water contamination;

(b) Gasoline stored in an approved Underwriters Laboratory container;

(c) Prepackaged retail quantities of fertilizers, pesticides, and auto and home care products only for home use.

(2) Failure to comply with any of the requirements of this section shall be deemed a violation and shall result in enforcement by civil penalty as set forth in DMMC 18.72.060. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 757 § 12, 1988.]

18.18.028 General design requirements.

All new development and significant redevelopment proposals within the RM-900A zone in the downtown neighborhood, as delineated in the Des Moines comprehensive plan, shall demonstrate substantial compliance with the adopted Marina District Design Guidelines. [Ord. 1486 § 3, 2010.]

18.18.030 Lot area in the RM-900A zone.

The minimum required area of a lot in the RM-900A zone shall be 7,200 square feet. [Ord. 887 § 8, 1991: Ord. 255 § 3(part), 1969: Ord. 175 § 1(24.17.030), 1964.]

18.18.035 Lot area in the RM-900B zone.

The minimum required area of a lot in the RM-900B zone shall be 65,340 square feet. [Ord. 887 § 9, 1991.]

18.18.040 Lot area per dwelling unit.

In the RM-900A zone the lot area per dwelling unit shall be not less than 900 square feet. [Ord. 887 § 10, 1991: Ord. 255 § 3(part), 1969: Ord. 175 § 1(24.17.040), 1964.]

18.18.050 Lot width.

In RM-900A and RM-900B zones every lot shall have a width of not less than 60 feet. [Ord. 887 § 11, 1991: Ord. 255 § 3(part), 1969: Ord. 175 § 1(24.17.050), 1964.]

18.18.060 Front yard.

In an RM-900A and RM-900B zone every lot shall have a front yard with a depth not less than 20 feet. [Ord. 255 § 3(part), 1969: Ord. 175 § 1(24.17.060), 1964.]

18.18.070 Side yard.

In an RM-900A and RM-900B zone every lot shall have a side yard on each side of the lot which side yard shall have a width of not less than 15 feet. Exceptions:

(1) Structures two stories in height may have side yards of 10 feet in width;

(2) Structures one story in height may have a side yard of five feet from one side and

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10 feet from the other side. [Ord. 255 § 3(part), 1969: Ord. 175 § 1(24.17.070), 1964.]

18.18.075 Rear yard.

In an RM-900A and RM-900B zone every lot shall have a rear yard with a depth of not less than 20 feet. [Ord. 255 § 3(part), 1969: Ord. 175 § 1(24.17.075), 1964.]

18.18.080 Height.

In RM-900A and RM-900B zones no building or structure shall exceed a height of 35 feet. [Ord. 887 § 12, 1991: Ord. 255 § 3(part), 1969: Ord. 175 § 1(24.17.080), 1964.]

18.18.090 Permissible floor area.

In an RM-900B zone the total permissible floor area to be contained within all buildings on a lot or building site shall not exceed the square foot area of the lot. This restriction does not apply to dwelling units when they constitute the only use on the lot. [Ord. 887 § 13, 1991: Ord. 255 § 3(part), 1969: Ord. 175 § 1(24.17.090), 1964.]

18.18.100 Permissible lot coverage.

In an RM-900B zone all buildings, including accessory buildings and structures, but not including private swimming pools on residential lots or open areas used to provide parking space, shall not cover more than 60 percent of the area of the lot. [Ord. 887 § 14, 1991: Ord. 255 § 3(part), 1969: Ord. 175 § 1(24.17.100), 1964.]

18.18.110 Placement of buildings and structures.

Placement of buildings and structures on any lot in RM-900A and RM-900B zones shall conform to the following:

(1) The distance between a building containing one or more dwelling units or accessory living quarters and any other buildings on the same lot shall be not less than 10 feet.

(2) On the rear third of a lot, accessory buildings not containing accessory living quarters may be built to the lot side lines and the lot rear line, except as provided below:

(a) On corner and reverse corner lots, structures one story in height shall observe a distance of not less than 10 feet from the lot side line abutting the street.

(b) On interior lots, no building shall be erected closer than 10 feet to the lot rear line.

(c) On corner and reverse corner lots not abutting an alley along the lot rear line, no building shall be erected closer than five feet to the lot rear line.

(d) On corner and reverse corner lots abutting an alley along the lot rear line, accessory buildings may be built to the lot rear line.

(e) On all lots which abut an alley along the lot rear line, a garage with a vehicular entrance from the alley shall maintain a distance not less than 15 feet from the centerline of such alley.

(3) In the RM-900B zone, all buildings and structures shall maintain a distance not less than 20 feet from any lot in a residential zone. [Ord. 1237 § 4, 1999; Ord. 887 § 15, 1991: Ord. 255 § 3(part), 1969: Ord. 175 § 1(24.17.110), 1964.]

18.18.120 Recreation area required.

On-site recreation area shall be provided with multifamily developments as specified in chapter 18.45 DMMC. [Ord. 901 § 5, 1991.]

Chapter 18.19

R-SE RESIDENTIAL: SUBURBAN ESTATE ZONE

Sections

18.19.010 Purpose of zone.

The principal objective and purpose to be served by this zone and its application is to provide areas permitting uses and activities more rural in character than practical in the more concentrated urban areas and, at the same time, establishing and maintaining a living environment of high standard for single-family residential use. As a means to this end, substantial lot areas and yards and open spaces are required. [Ord. 1237 § 3, 1999; Ord. 304 § 1(part), 1972.]

18.19.020 Permitted uses.

In an R-SE zone the following uses only are permitted and as specifically provided in and allowed by this chapter, subject to the off-street parking requirements and the general provisions and exceptions set forth in chapters 18.36, 18.40, and 18.44 DMMC:

(1) Any use permitted in the single-family residential zone under the same conditions set forth in such zone, except that the lot area, yard, and open space requirements set forth in this zone shall apply;

(2) Agricultural crops; provided, no retail sales of products are permitted on the premises;

(3) Accessory buildings and uses, including the following:

(a) Private stables; provided, such buildings or structures shall not be located closer than 35 feet to any boundary property line or closer than 45 feet to any building containing a dwelling unit or accessory living quarters on the same premises; and provided further, that there shall be no open-air storage of hay, straw, shavings, or similar organic materials closer than 35 feet to any boundary property line or closer than 45 feet to any dwelling unit or accessory living quarters on the same premises;

(b) Greenhouses for propagation and culture only and no sales from the premises is permitted;

(4) Horses for use of the occupants of the premises only; provided, not more than one horse for each one-half acre of the total site area shall be permitted;

(5) Pasture and grazing but not including feed lots; provided, where such pasture or grazing area abuts upon any property line which is a common property line with residential property, there shall be erected and maintained on such common property line a fence not less than five feet nor more than six feet in height;

(6) Raising of chickens, squab, and rabbits for use of the occupants of the premises only; provided:

(a) No more than 30 of any one or combination of such fowl or animals may be kept on the premises;

(b) Any birds kept on the premises shall be confined within an aviary;

(c) Any buildings, pens, aviary, or structure used to house or contain such fowl and animals shall not be located closer than 35 feet to any boundary property line of the premises, or closer than 45 feet to any building containing a dwelling unit or accessory living quarters on the same premises;

(7) Raising of hamsters, nutria, and chinchilla for commercial purposes; provided:

(a) Not more than 100 hamsters, or 100 chinchillas, or 100 of such animals in combination, may be kept on the premises;

(b) Any building, pens, cages, or structures used to contain or house such animals shall not be located closer than 35 feet to

any boundary property line of the premises, or closer than 45 feet to any building containing a dwelling unit or accessory living quarters on the same premises;

(8) *(Repealed by Ord. 584)*;

(9) Planned unit development as provided in chapter 18.52 DMMC;

(10) Unclassified uses as provided in chapter 18.32 DMMC. [Ord. 1237 §§ 2, 3, 4, 1999; Ord. 584 § 7(part), 1983; Ord. 304 § 1(part), 1972.]

18.19.025 Hazardous substances.

(1) No use permitted in this chapter, with the exception of public utility and service facilities, shall store any hazardous substance, except that for the purposes of this chapter the following substances shall be exempt:

(a) Heating oil stored in an underground tank sufficiently contained so as to preclude soil and ground water contamination;

(b) Gasoline stored in an approved Underwriters Laboratory container;

(c) Prepackaged retail quantities of fertilizers, pesticides, and auto and home care products only for home use.

(2) Failure to comply with any of the requirements of this section shall be deemed a violation and shall result in enforcement by civil penalty as set forth in DMMC 18.72.060. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 757 § 13, 1988.]

18.19.030 Lot area.

The minimum required area of a lot in an R-SE zone shall be 35,000 square feet. [Ord. 1237 § 2, 1999; Ord. 304 § 1(part), 1972.]

18.19.040 Lot area per dwelling unit.

In an R-SE zone the lot area per dwelling unit shall be not less than 35,000 square feet. [Ord. 1237 § 2, 1999; Ord. 304 § 1(part), 1972.]

18.19.050 Lot width.

In an R-SE zone every lot shall have a width of not less than 135 feet. [Ord. 1237 § 2, 1999; Ord. 304 § 1(part), 1972.]

18.19.060 Front yard.

In an R-SE zone every lot shall have a front yard with a depth of not less than 30 feet. [Ord. 1237 § 2, 1999; Ord. 304 § 1(part), 1972.]

18.19.070 Side yard.

In an R-SE zone every lot shall have a side yard on each side of the lot which side yard shall have a width of not less than 10 feet. [Ord. 1237 § 2, 1999; Ord. 304 § 1(part), 1972.]

18.19.080 Height.

In an R-SE zone no building or structure shall exceed a height of 35 feet, except for agricultural buildings as set forth in the general provisions. [Ord. 1237 § 2, 1999; Ord. 304 § 1(part), 1972.]

18.19.090 Permissible lot coverage.

All buildings and structures including accessory buildings and structures and any areas used to provide parking space, shall not cover more than 35 percent of the area of the lot. [Ord. 304 § 1(part), 1972.]

18.19.100 Placement of buildings and structures.

Placement of buildings and structures on any lot in an R-SE zone shall conform to the following:

(1) Interior Lots.

(a) Any building containing a dwelling unit or accessory living quarters shall observe a distance of not less than 10 feet from any lot side line and the lot rear line;

(b) The distance between a building containing a dwelling unit or accessory living quarters and any other buildings on the same lot shall be not less than 20 feet;

(c) On the rear third of a lot, accessory buildings not containing accessory living quarters (but not stables) may be built to the lot side lines and the lot rear line; provided, not less than 10 feet of the lot rear line shall be free and

clear of buildings; and provided further, if the lot rears upon an alley a garage with a vehicular entrance from the alley shall maintain a distance of not less than 15 feet from the centerline of the alley.

(2) Corner Lots and Reverse Corner Lots.

(a) Any building containing a dwelling unit or accessory living quarters shall observe a distance of not less than 10 feet from any lot side line and the lot rear line;

(b) The distance between a building containing a dwelling unit or accessory living quarters and any other buildings on the same lot shall be not less than 20 feet;

(c) On the rear third of a corner lot, accessory buildings not containing accessory living quarters (but not stables) may be built to the lot interior side line and the lot rear line; provided, if the lot rears upon an alley a garage with a vehicular entrance from the alley shall maintain a distance not less than 15 feet from the centerline of such alley;

(d) On the rear third of a reverse corner lot, accessory buildings not containing accessory living quarters (but not stables) may be built to the lot interior side line, but no buildings shall be erected closer than 10 feet to the lot rear line unless an alley intervenes, in which case accessory buildings may be built to the lot rear line unless the accessory building is a garage with a vehicular entrance directly from the alley, in which case such building shall maintain a distance of not less than 15 feet from the centerline of the alley;

(e) In all cases the width of the required side yard on the side street side shall be observed. [Ord. 1237 § 2, 1999; Ord. 304 § 1(part), 1972.]

Chapter 18.20

N-C NEIGHBORHOOD COMMERCIAL ZONE

Sections

18.20.010 Purpose of zone.

The purpose of this zone and its application is to provide for the location of and grouping of uses which are considered compatible uses having common performance standards in that they represent on-premises retail enterprises and involve only incidental and limited fabrication or assembly of commodities, or comprise a type of enterprise dispensing commodities, or providing professional services, or providing personal services to the individual. These services are intended to provide local facilities to serve the everyday needs of the neighborhood area. To meet this need will require that the facilities permitted in this zone shall locate adjacent to residential areas on access streets directly serving such residential areas. By establishing limitations upon building height and floor space as set forth in this zone, it is the further objective to maintain a limited intensity of land use compatible with serving the neighborhood residential areas, rather than on a community-wide basis. A further purpose of this zone and its application is to permit the more efficient and economical design and installation of all physical public service facilities in terms of size and capacity to adequately and permanently meet needs resulting from a defined intensity of land use. Public utility installations, being governed by circumstances related to geographical area to be served, are also permitted in this zone. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.26.010), 1964.]

18.20.020 Permitted uses.

Any of the following types of uses which can meet the following standards are permitted and allowed by this zone, subject to the limitations set forth in this chapter:

(1) Any on-premises retail enterprise dispensing food or commodities (but not including automobiles, boats, trailers, and heavy-duty equipment) and which may involve only incidental and limited fabrication or assembly of commodities;

(2) Business offices and any type of use rendering professional services or personal services to the individual; provided:

(a) The service does not involve keeping the person receiving the service overnight on the premises;

(b) The service does not include selling alcoholic beverages for on-premises consumption unless accessory to restaurant;

(c) The service does not involve in whole or in part the providing of recreation, recreational facilities, or entertainment other than moorage for private pleasure craft;

(d) The professional service does not include kennels or small animal hospitals or clinics;

(3) Any public utility installation relating directly to local distribution of services including switching and transmission stations but not including warehouses, service yards, or the like unless otherwise permitted by this title;

(4) Public off-street parking facilities, whether publicly or privately owned and operated; provided, any area so used shall not be used for a vehicle, trailer, or boat sales area or for the accessory storage of such vehicles;

(5) Churches;

(6) Planned unit development as provided in chapter 18.52 DMMC;

(7) Public office buildings, art galleries, museums, libraries, police and fire stations;

(8) One antenna system which exceeds the maximum building height specified for the commercial zone and which:

(a) Does not exceed 15 feet in height above the building height limitation for the applicable zone;

(b) Is set back at least the vertical height of the antenna system measured from the center point of the base of the mast horizontally to the nearest property line;

(c) Has a maximum horizontal cross-sectional area for that part of the mast which is above building height limitation for the zone such that an imaginary four-inch diameter circle would encompass all points of the horizontal cross-section;

(d) Has a maximum allowable three-dimensional space intrusion of 1,200 cubic feet for single ground plane antennas with a single driven element, and 200 cubic feet for beams, quads, and other multi-element antennas; provided, that these limitations on three-dimensional space intrusion shall not be applicable to single long-wire antennas, single whip antennas, and single coaxial antennas. In this paragraph, "three-dimensional space intrusion" means the space within an imaginary rectangular prism which contains all extremities of an antenna;

(e) Does not encroach into any required setback for the zone; a guy wire and anchor point for an antenna system is prohibited in any required setback or within three feet of the side or rear property lines; provided, if any alley abuts a rear property line, a guy wire and anchor point may extend to the rear property line;

(f) Provided, that a variation from the above limitations not to exceed 10 percent may be granted by city administrative officials; such variation shall be granted when it will not significantly increase the hazard factor, the aesthetic impact, or the economic consequences of such antenna system;

(g) Further provided, that all antenna systems exceeding the above limitations and legally in place on November 5, 1978, the effective date of the ordinance codified in this subsection (8), shall have one year within which to satisfy the requirements for and receive a conditional use permit which authorizes the continued placement of such antenna system;

(h) Further provided, that all antenna systems constructed, enlarged, or moved after November 5, 1978, shall comply with the provisions of chapter 14.06 DMMC[1] on the antenna system review permit process;

(9) Multiple dwelling units. [Ord. 1534 § 1, 2012: Ord. 1237 § 3, 1999; Ord. 617 § 5, 1985; Ord. 445 § 3, 1978; Ord. 175 § 1(24.26.020), 1964.]

18.20.030 Limitations on uses.

Every use locating in a N-C zone shall be subject to the following further conditions and limitations:

(1) All uses shall conform to the general provisions and exceptions, off-street parking requirements and loading area requirements set forth beginning with chapter 18.36 DMMC; and all parking lots, parking areas, and loading areas shall be surfaced, screened, developed, and maintained;

(2) All uses shall be conducted wholly within an entirely enclosed building except:

(a) Public utility installations;

(b) Growing stock in connection with horticultural nurseries, whether the stock is in open ground, pots, or containers;

(c) Moorages for private pleasure craft;

(d) Parking and loading areas;

(e) Public off-street parking lots;

(3) Any areas used as set forth in subsection (2) of this section, except horticultural nurseries, moorages, and public utility installations, shall be improved and maintained as required for off-street parking areas;

(4) No automobile service stations are permitted in the N-C zone;

(5) All products made incident to a permitted use which are manufactured, processed, or treated on the premises shall be sold on the premises only and at retail only, and not more than three persons may be employed in the manufacturing, processing, or treatment of products, except that this limitation shall not apply to restaurants;

(6) Any repairing done on the premises shall be incidental only and limited to custom repairing of the types of merchandise sold on the premises at retail; the floor area devoted to such repairing shall not exceed 20 percent of the total floor area occupied by the particular enterprise of which it is a part, except that the limitations of this paragraph shall not apply to shoe, radio, television, or other small household appliance repair service;

(7) No used or secondhand articles, materials, or equipment unless accessory to the primary activity may be sold, offered for sale, or stored on the premises except paintings, objects of art, or antiques as defined in this title;

(8) Storage shall be limited to accessory storage of commodities sold at retail on the premises or materials used in the limited fabrication of commodities sold at retail on the premises;

(9) All operations conducted on the premises shall not be objectionable beyond the property boundary lines by reason of noise, steam, odor, fumes, gases, smoke, vibration, hazard, or other causes, and any use which produces odor, fumes (toxic or nontoxic), gases, airborne solids, or other atmospheric contaminants shall be allowed to locate only if conforming in every respect to the rules and regulations established by an applicable and qualified public agency;

(10) If a building site has a boundary line which is a common line with residential property, a wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height shall be installed and maintained for screening purposes and controlling access. Where the wall of a building is on such common property line, no separate wall or fence need be installed along that portion of the common property line occupied by the wall of the building. Public utility installations need not fence along such lines; provided, the conditions set forth in DMMC 18.08.020(12)(c) are maintained adjacent to common boundaries with residential property;

(11) *(Repealed by Ord. 617);*

(12) *(Repealed by Ord. 584).* [Ord. 1237 §§ 2, 4, 1999; Ord. 617 § 3(part), 1985; Ord. 584 § 7(part), 1983; Ord. 193 §§ 2, 3, 1965; Ord. 175 § 1(24.26.030), 1964.]

1. Code reviser's note: Chapter 14.06 (§ 8 of Ord. 445), was repealed by Ord. 938.

18.20.035 Hazardous waste and hazardous substances.

Any use permitted by this chapter which involves the treatment or storage of hazardous waste or the use or handling of hazardous substances shall conform to the regulations contained in this section. In the event there is a conflict between the provisions of this section and any other provision of this chapter, the provisions of this section shall prevail.

(1) Off-site hazardous waste facilities are prohibited.

(2) On-site hazardous waste facilities are permitted as an accessory use only; provided, that the location of such facilities shall be consistent with siting criteria adopted or hereafter amended by the Department of Ecology under RCW 70.105.210 incorporated in this section by reference and that the transport, storage, containment, treatment, or disposal of such hazardous wastes shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

(3) The use or handling of hazardous substances are permitted as an accessory use only; provided, that the transport, storage, containment, application and disposal of such hazardous substances shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

(4) Violation – Civil Penalty, Revocation of Business License. Failure to comply with any of the requirements of this section shall result in enforcement by civil penalty as set forth in DMMC 18.72.060 and revocation of business license as set forth in DMMC 5.04.060.

(5) Violation – Abatement Authorized. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 757 § 2, 1988.]

18.20.040 Permissible floor area.

The maximum permitted floor area to be contained in all buildings on a lot or site in a N-C zone shall not exceed the square foot area of the lot or site upon which the building or buildings are located. [Ord. 1237 § 2, 1999; Ord. 175 § 1(24.26.040), 1964.]

18.20.050 Height.

In a N-C zone no building or structure shall exceed a height of 35 feet. [Ord. 1237 § 2, 1999; Ord. 175 § 1(24.26.050), 1964.]

18.20.060 Required open spaces.

Additional open spaces, both as to amount and location on the premises may be required in connection with a variance or planned unit development to apply the established requirements of this and related codes pertaining to such subjects as off-street parking, loading areas, convenient and safe circulation of vehicles and pedestrians, ingress and egress as related to marginal traffic pattern, vision clearance (traffic), drainage, and lighting. [Ord. 175 § 1(24.26.060), 1964.]

Chapter 18.22

I-C INSTITUTIONAL CAMPUS ZONE

Sections

18.22.010 Purpose of zone.

(1) To provide a zoning district for colleges, universities, educational facilities, and retirement facilities.

(2) To ensure that colleges, universities, educational facilities, and retirement facilities that occupy large sites are planned, designed, and managed in a way that minimizes impacts on adjacent areas.

(3) To ensure that the expansion of existing institutional uses does not significantly adversely impact quality of life in adjacent residential areas. [Ord. 1544 § 2(1), 2012.]

18.22.020 Permitted uses.

Only those uses listed below shall be permitted in the I-C zone. Each use is more fully described in the United States Office of Management and Budget, North American Industry Classification System (2007), or as subsequently revised. The numbers in parentheses following each of the listed uses refer to the North American Industry Classification System (NAICS) code numbers:

(1) Educational services (61);

(2) Nursing and residential care facilities (623);

(3) Religious, grant-making, civic, and professional organizations (813). [Ord. 1544 § 2(2), 2012.]

18.22.030 Master plans.

(1) Purpose. The purpose of the master plan is to define the development of property, promote compatibility with neighboring areas and benefit the community with flexibility and innovation. With the exception of those uses and standards contained in this section, all other aspects of development, redevelopment or expansion will be regulated as prescribed in this title and other applicable codes.

(2) Master Plan Required. Master plan approval shall be required for all institutional uses with 150,000 square feet of total gross floor area or more. The calculation of the total gross floor area is calculated by combining the total gross floor area of all the buildings located within a contiguous campus area.

(3) Contents of Master Plan. A master plan shall consist of the following:

(a) Site plans drawn at a maximum scale of 1:40 and illustrating the following:

(i) Boundaries, dimensions, and acreage of the site;

(ii) Location of lot lines, rights-of-way, easements, and tracts within the site;

(iii) Location and nature of planned improvements to the vehicular and pedestrian circulation system within and abutting the site;

(iv) Location of planned buildings, structures, parking areas, and other improvements within the site;

(v) Location of proposed landscaped areas, recreation areas, and areas to be left undisturbed;

(b) Conceptual landscaping plans for all required landscaping areas, exterior boundaries, internal streets, and common open space areas. The conceptual landscaping plans shall be drawn at a maximum scale of 1:20 and shall be prepared by a licensed landscape architect; and

(c) Conceptual utilities plan drawn at a maximum scale of 1:20;

(d) Environmental checklist;

(e) Vicinity map(s) showing existing conditions within and surrounding the site including: land uses, zoning, buildings, vehicular and pedestrian circulation systems, existing topography indicated with five-foot contours, environmentally critical areas, and significant natural vegetation. The vicinity map shall be drawn at a maximum scale of 1:100;

(f) A narrative description of the proposal, including a discussion of how it is con-

sistent with applicable comprehensive plan policies; how any off-site environmental impacts will be mitigated; and a description of planned improvements, including the maximum site coverage, maximum gross square feet of occupiable floor area and the maximum floor area to be occupied by different types of uses, maximum building height for each building location, the nature and extent of off-site improvements, and development phasing;

(g) A traffic analysis and report indicating the following: current and future traffic volumes and levels of service on the street system; planned and programmed traffic improvements and their relationship to any adopted state, local, and/or regional transportation plans or programs; anticipated traffic volumes and distribution; impacts generated by the proposal on future traffic volumes and levels of service; measures necessary to mitigate the proposal's effects on traffic and traffic systems, including the proposal's pro rata share of identified traffic improvements; a proposed transportation demand management (TDM) plan to reduce traffic impacts; and such other information as may be required by the city;

(h) A technical information report containing the elements required by the city's adopted surface water design manual;

(i) Covenants, conditions, and restrictions proposed by the applicant to control future development of the area subject to the master plan; and

(j) A sign program indicating the general location, dimensions, height, and materials of signs consistent with the requirements for a comprehensive sign review provided in Article III of Chapter 18.42 DMMC. [Ord. 1544 § 2(3), 2012.]

18.22.040 Master plan decision criteria.

A master plan approval shall be granted by the city only if the applicant demonstrates that:

(1) The master development plan includes a general phasing timeline of development and associated mitigation.

(2) The master development plan meets or exceeds the current regulations for critical areas if critical areas are present.

(3) There is either sufficient capacity and infrastructure (e.g., roads, sidewalks, bike lanes) in the transportation system (motorized and nonmotorized) to safely support the development proposed in all future phases or there will be adequate capacity and infrastructure by the time each phase of development is completed. If capacity or infrastructure must be increased to support the proposed master development plan, then the applicant must identify a plan for funding their proportionate share of the improvements.

(4) There is either sufficient capacity within public services such as water, sewer and stormwater to adequately serve the development proposal in all future phases, or there will be adequate capacity available by the time each phase of development is completed. If capacity must be increased to support the proposed master development plan, then the applicant must identify a plan for funding their proportionate share of the improvements.

(5) The master development plan proposal contains architectural design (including but not limited to building setbacks, insets, facade breaks, roofline variations) and site design standards, landscaping, provisions for open space and/or recreation areas, retention of significant trees, parking/traffic management and multimodal transportation standards that minimize conflicts and create transitions between the proposal site and adjacent neighborhoods and between institutional uses and residential uses.

(6) The applicant shall demonstrate that proposed commercial or laboratory uses will be safe for the surrounding neighborhood and for other uses on the campus. [Ord. 1544 § 2(4), 2012.]

18.22.050 Master plan amendments.

(1) Minor amendments to an approved master development plan may be approved by the city manager or designee if the amendment meets the development standards and criteria applicable to the zoning and requirements set forth in this section. Minor amendments include any revision or modification of the previously approved master development plan

that would result in any one or more of the following:

(a) An increase in the square footage of any proposed building or structure of greater than 10 percent but less than 15 percent; or

(b) A change in the number of new parking spaces, parking spaces created by restriping existing parking areas and/or a combination of both, except for an increase in parking spaces for bicycles or electric vehicles or carpools that is greater than 10 percent but less than 15 percent; or

(c) A change in the original phasing timeline for mitigation of the master development plan; or

(d) Changes to building placement when located outside of the required setbacks and any required setbacks for critical areas; or

(e) A cumulative increase in impervious surface that is greater than 10 percent but less than 15 percent or a cumulative decrease in tree cover that is greater than 10 percent and less than 15 percent.

(2) Major amendments are changes that exceed the thresholds for a minor amendment or were not analyzed as part of an approved master development plan. Major amendments to an approved master development plan shall be processed as a new master plan. [Ord. 1544 § 2(5), 2012.]

18.22.060 Property development standards.

All properties zoned I-C shall be subject to the following development standards:

(1) The maximum building height for master plan sites of 10 acres or more shall be as follows:

(a) The maximum building height for multi-unit residential buildings shall be 85 feet as measured from the average finished grade.

(b) The maximum building height for all other buildings and structures shall be 65 feet as measured from the average finished grade.

(2) The maximum building height for master plan sites of less than 10 acres shall be as follows:

(a) The maximum building height for multi-unit residential buildings shall be 45 feet as measured from the average finished grade.

(b) The maximum building height for all other buildings and structures shall be 35 feet as measured from the average finished grade.

(3) Buildings with a height of 35 feet or less shall be set back a minimum of 20 feet from all property lines. Buildings with a height above 35 feet shall be set back 20 feet for the first 35 feet plus one foot for every 2 feet of height above 35 feet.

(4) Buildings, parking areas, and other paved surfaces, exclusive of public rights-of-way and recreation areas developed and accessible to the public, shall cover no more than 75 percent of the building site. [Ord. 1544 § 2(6), 2012.]

18.22.070 Performance standards.

Every property within the I-C zone shall conform to the following performance standards:

(1) Nuisances. No use, activity, or equipment shall be permitted which creates a nuisance or is offensive, objectionable, or hazardous by reason of creation of odors, noise, sound, vibrations, dust, dirt, smoke, or other pollutants, noxious, toxic, or corrosive fumes or gases, radiation, explosion or fire hazard, or by reason of the generation, disposal, or storage of hazardous or dangerous wastes or materials.

(2) Loading and Parking Areas.

(a) Loading areas shall be set back, recessed and/or screened so as not to be visible from adjacent public rights-of-way or properties designated as single-family, multifamily, or park by the city of Des Moines comprehensive plan.

(b) Load areas shall only be allowed between the rear lot line and the extension of the front facade of the principal structure, provided no loading areas are allowed between a building and a side street lot line.

(3) All uses shall conform to the off-street parking and loading area requirements as set forth in chapter 18.44 DMMC, or as hereinafter amended; provided, however, employee

parking may be reduced through implementation of a transportation demand management (TDM) program.

(4) Landscaping.

(a) All uses shall conform to the landscaping and buffering requirements as set forth in chapter 18.41 DMMC.

(b) Landscaping shall be designed to achieve an aesthetically pleasing park-like setting; integrate landscaping in master plan design; preserve significant trees, particularly tree clusters; reinforce the relationship to its natural setting; soften building masses; provide visual screening from, and provide transition to, adjacent residential areas, and noise and wind buffering; define automobile and pedestrian circulation patterns; maintain and strengthen public vistas; provide screening for on-site parking areas, and refuse and recycling receptacles; create functional and accessible active and passive outdoor activity spaces; and create linkages, where feasible, to city and regional parks and trail systems.

(5) Trash and Recycling Receptacles. Trash and recycling receptacles shall be a minimum of 15 feet from any properties designated as single-family, multifamily, or park by the city of Des Moines comprehensive plan.

(6) Exterior Mechanical Devices. Air conditioners, heating, cooling, ventilating equipment, pumps and heaters and all other mechanical devices shall be screened from surrounding properties and streets and shall comply with the maximum environmental noise levels established by chapter 173-60 WAC as presently constituted or as may be subsequently amended.

(7) Exterior Lighting.

(a) Lighting shall comply with the Zone 2 requirements for exterior light established by the 2009 Washington State Energy Code as presently adopted or as subsequently amended.

(b) Lighting shall be fully shielded in such a manner that the bottom edge of the shield shall be below the light source so no light is emitted above the horizontal plane of the lighting fixture.

(c) Ground-mounted floodlighting shall only be used to illuminate landscaping areas, accentuate key architectural features or illuminate flag poles.

(d) Exterior lighting shall provide a minimum of at least 1.5 foot-candles for parking lots and walkways.

(e) Exterior lighting shall be less than 0.2 foot-candles at the property lines which abut properties designated as single-family, multifamily, or park by the Des Moines comprehensive plan.

(f) A photometric plan and exterior lighting summary shall be required and shall be submitted as part of the building permit application. [Ord. 1544 § 2(7), 2012.]

Chapter 18.24

B-C BUSINESS COMMERCIAL ZONE[1]

Sections

18.24.010 Purpose of zone.

The purpose of the business commercial zone is to strengthen and preserve the area referred to as "downtown" for retail, office, service, financial, and commercial operations that serve the community trading area and tourists. It is further the purpose of this zone to ensure compact, convenient development patterns by improving pedestrian access and amenities, to permit uses which are primarily pedestrian-oriented and which increase public enjoyment of the commercial zone. [Ord. 1237 §§ 2, 3, 4, 1999; Ord. 1170 § 7, 1996; Ord. 696 § 1(A), 1987.]

18.24.020 Permitted uses.

The following uses only are permitted, and as specifically provided and allowed by this chapter:

(1) Administrative, professional, and business offices;

(2) Accredited or licensed schools and studios for education or self-improvement;

(3) General merchandise stores, such as catalogue sales stores, clothing and shoe stores, department stores, drug stores, hardware stores, antique stores, dry goods or notions stores, secondhand stores, sporting goods, and variety stores;

(4) Food and beverage establishments such as bakeries, candy stores, delicatessens, ice cream stores, grocery stores, liquor stores, meat and fish markets;

(5) Specialized stores, such as bicycle, book, stationery, computer, florist, gift, jewelry, hobby, toy, and pet stores;

(6) Restaurants, cocktail lounges, and taverns;

(7) Public parks;

(8) Government facilities;

(9) Private lodge, clubs, and fraternal societies;

(10) Public office buildings, art galleries, museums, libraries, and cultural uses;

(11) Public off-street parking facilities, for private passenger cars;

(12) Public transit shelters when they will not unreasonably impede pedestrian movement or create traffic safety problems;

(13) Financial services, such as finance offices, insurance offices, real estate offices, and social service agencies;

(14) Personal services such as barber shops, beauty shops, photographic studios, tailor shops, travel agencies, shoe repair, laundry, and dry cleaners;

(15) Banks;

(16) Light manufacturing, sales, and repair of accessories for boats (such as boat covers, sails, flags, pennants, upholstery, and the like). [Ord. 1170 § 7, 1996; Ord. 828 § 1, 1989; Ord. 696 § 1(B), 1987.]

18.24.030 Limitations on uses.

Limitations on permitted uses in a B-C zone are as follows:

(1) Accessory uses are permitted that are customarily appurtenant or incidental to the principally permitted uses such as:

(a) Signs as regulated in chapter 18.42 DMMC;

(b) Antenna systems, subject to the conditions set forth in DMMC 18.20.020(8).

(2) All uses permitted in this zone shall be contained wholly within an enclosed structure except:

1. Prior legislation: Ords. 175, 193, 248, 445, 584, and 617.

(a) Eating establishments when space for public service is contained within the boundary of the building site and does not obstruct vehicular movement;

(b) Signs;

(c) Parking and loading facilities;

(d) Outdoor displays when contained within the boundary of the building site and do not obstruct vehicular or pedestrian movement;

(e) Outdoor activities which comply with all of the following:

(i) No more than 15 percent of the building site is occupied by outdoor activity;

(ii) The outdoor activity is enclosed by a sight-obscuring fence and/or landscape screen; and

(iii) The entire outdoor activity is located between the lot rear line and the primary structure on the site.

(3) Drive-in and drive-through facilities are not permitted in the B-C zone.

(4) All uses shall conform to the general provisions and exceptions of off-street parking requirements and loading area requirements set forth in this title beginning with chapter 18.36 DMMC.

(5) All products made incident to a permitted use which are manufactured, processed or treated on the premises shall be sold only at retail.

(6) Except for the repair of accessories for boats, any repairing done on the premises shall be incidental only, and limited to custom repairing of the types of merchandise sold on the premises at retail. The floor area devoted to such repairing shall not exceed 30 percent of the total floor area occupied by the particular enterprise, except that the limitations of this paragraph shall not apply to shoe repair, tailor services, watch repair, repair of accessories for boats, and similar establishments.

(7) Storage shall be limited to accessory storage of commodities sold at retail on the premises or materials used in the limited fabrication of commodities sold at retail on the premises and shall not exceed 30 percent of the total floor area occupied by the particular enterprise.

(8) Adult entertainment facilities shall not be permitted in the B-C zone.

(9) Adult motion picture theaters shall not be permitted in the B-C zone.

(10) Use of cleaning agents shall be limited to nonflammable and nonexplosive fluids with a flash point above 138 degrees Fahrenheit in a closed safety cleaning system.

(11) All operations conducted on the premises shall not be objectionable beyond the property boundary lines by reason of noise, odor, fumes, gases, smoke, steam, vibration, hazard, or other causes. Any use the operation of which produces odor, fumes (toxic or nontoxic), gases, airborne solids, or other atmospheric contaminants shall be allowed to locate only if conforming in every respect to any rules and regulations established by any regulatory agency by appropriate authority. [Ord. 1170 § 7, 1996; Ord. 828 § 2, 1989; Ord. 696 § 1(C), 1987.]

18.24.040 Uses requiring conditional use permit.

The following uses may locate in a B-C zone subject to issuance of a conditional use permit as provided in the hearing examiner code:

(1) Animal hospital services and veterinarian services; provided, that no outside runs or animal storage will be permitted in this zone, such use shall not be located in a mixed use structure, any buildings or structures or portion thereof used to house animals shall be soundproofed, designed by a qualified acoustical engineer, and there shall be no burning of refuse or dead animals;

(2) Public utilities, except distribution centers, warehouses, and storage or service yards; provided, that such uses are consistent with the intent of this zone;

(3) Day care centers and mini-day care programs:

(a) Minimum Lot. 10,000 square feet;

(b) Front Yard. There shall be a front yard of at least 20 feet minimum depth;

(c) Side Yard. Each side yard shall be a minimum of eight feet width;

(d) Rear Yard. The rear yard shall be at least 20 feet minimum depth;

(e) State licensing standards for such facilities, chapter 388-73 WAC, shall be met;

(f) Ingress and Egress. A separate entrance and exit shall be provided. Loading and unloading areas shall be provided and shall be located off the public street;

(g) Landscaping. Landscaping shall be provided to a minimum width of eight feet along property line abutting residential uses;

(4) Other conditional uses as listed in DMMC 18.32.030 and in accordance with DMMC 18.32.040 through 18.32.060. [Ord. 1237 § 3, 1999; Ord. 1170 § 7, 1996; Ord. 793 § 7, 1989; Ord. 696 § 1(D), 1987.]

18.24.050 Uses requiring unclassified use permit.

Uses requiring an unclassified use permit in a B-C zone are as follows:

(1) Commercial recreation areas, or amusement uses;

(2) Commercial parking lot;

(3) Mixed uses;

(4) Supermarkets;

(5) Other uses requiring an unclassified use permit as itemized in DMMC 18.32.020 and as otherwise provided in chapter 18.32 DMMC. [Ord. 1374 § 1, 2006: Ord. 1170 § 7, 1996; Ord. 696 § 1(E), 1987.]

18.24.055 Hazardous waste and hazardous substances.

Any use permitted by this chapter which involves the treatment or storage of hazardous waste or the use or handling of hazardous substances shall conform to the regulations contained in this section. In the event there is a conflict between the provisions of this section and any other provision of this chapter, the provisions of this section shall prevail.

(1) Off-site hazardous waste facilities are prohibited.

(2) On-site hazardous waste facilities are permitted as an accessory use only; provided, that the location of such facilities shall be consistent with siting criteria adopted or hereafter amended by the Department of Ecology under RCW 70.105.210 incorporated in this chapter by reference and that the transport, storage, containment, treatment, or disposal of such hazardous wastes shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

(3) The use or handling of hazardous substances are permitted as an accessory use only; provided, that the transport, storage, containment, application, and disposal of such hazardous substances shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

(4) Violation – Civil Penalty, Revocation of Business License. Failure to comply with any of the requirements of this section shall result in enforcement by civil penalty as set forth in DMMC 18.72.060 and revocation of business license as set forth in DMMC 5.04.060.

(5) Violation – Abatement Authorized. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 1170 § 7, 1996; Ord. 757 § 3, 1988.]

18.24.060 Permissible floor area.

The maximum permitted floor area to be contained in all buildings on a lot in a B-C zone shall not exceed three times the area of the lot. [Ord. 1170 § 7, 1996; Ord. 696 § 1(F), 1987.]

18.24.070 Height.

In a B-C zone no building or structure shall exceed a height of 35 feet. For the purposes of this section, building height shall mean the vertical distance from median sidewalk grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the highest gable of a pitch or hip roof. [Ord. 1170 § 7, 1996; Ord. 696 § 1(G), 1987.]

18.24.080 Landscaping required.

Landscaping in a B-C zone shall be provided pursuant to chapter 18.41 DMMC. [Ord. 1170 § 7, 1996; Ord. 696 § 1(H), 1987.]

18.24.090 Placement of buildings and structures.

Placement of buildings and structures, including additions to existing buildings or structures, but excluding signs, shall maintain minimum setbacks established by the department of community development based on the following criteria:

(1) When the front or side lot line abuts the public right-of-way, the building or structure shall abut the public right-of-way unless:

(a) Subsection (2) of this section requires that the building or structure be set back; or

(b) Through the permitting process, the community development director finds it is in the public interest to allow the proposed building or structure to be set back from the right-of-way. In considering a request for setback, the director shall consider matters such as adopted land use policies, vehicular and pedestrian circulation, landscaping, existing site improvements, adjacent site improvements, and public benefit features such as plazas and public artwork. Decisions of the director regarding setbacks are appealable to the hearing examiner pursuant to chapter 18.94 DMMC.

(2) Where any lot line lies adjacent to a public right-of-way or private street and residentially zoned property lies adjacent to such public right-of-way or private street, or when the lot line abuts a residentially zoned property, a minimum building or structure setback of 10 feet shall be maintained. [Ord. 1170 § 7, 1996; Ord. 1063 § 1, 1993; Ord. 696 § 1(I), 1987.]

18.24.100 Internal walkways.

In order to encourage safe pedestrian circulation through the siting of buildings, walkways shall be constructed on each property being newly developed or materially remodeled, enlarged, or repaired to the extent of 50 percent of the value of the existing structure as provided in this chapter. In the case of a series of additions, alterations, or repair projects, this section shall become effective at the point where in any three-year period the cumulative value of additions, alterations, or repairs exceeds 50 percent of the value of the structure at the time such additions, alterations, or repairs are commenced.

(1) Walkways Around Buildings. Pedestrian walkways shall be provided at or around the building(s) of sufficient extent to provide safe pedestrian passage; provided, however, where no side or rear yard exists no walkway will be required along those portions of the building abutting the lot line. A minimum six-foot walkway shall be required adjacent to the principal entrance to the building(s).

(2) Street Sidewalk Connections. A minimum six-foot pedestrian walkway shall be provided which connects walkways at the building to street sidewalks. Where no street sidewalk exists, the connecting walk shall extend to the street right-of-way.

(3) Connection to Adjoining Properties. Walkways shall be provided which connect to adjoining properties in locations on, or as near as possible to, desired lines of pedestrian traffic in accordance with the comprehensive walkway plan. A minimum six-foot walkway shall be required between adjacent building fronts. Alternate routes or branch connections to perimeter or other walkways shall be a minimum of five feet in width.

(4) Coordination with Circulation System. All such required pedestrian walks shall be located and constructed as an integral part of the total coordinated pedestrian circulation system.

(5) Design Standards.

(a) Surface. Walkways shall be paved with hard-surfaced material such as concrete, stone, brick, tile, etc. Walkways shall be clearly defined and differentiated from parking and vehicle circulation areas by use of contrasting paving, such as white concrete in an asphalt area, visually obvious paint stripes, or other clearly defined pattern. Where paint is used, the property owner shall be responsible for maintaining the paint to achieve the intent of this section.

(b) Stairs. Where stairs are employed, the riser to thread proportion shall be designed to normal stair standards or be clearly monumental in proportion. Handrails shall be provided where the number of risers or adjoining grade difference requires the protection afforded by rails, as determined by the public works director. (See Section 3305 of the Uniform Building Code). Any flight of stairs within 15 feet of any other flight of stairs, if it is on a pedestrian route, shall have the same riser and thread dimensions.

(c) Lighting. Night lighting shall be provided where stairs, curbs, ramps, or abrupt changes in walkway direction occur. Light fixtures shall not exceed a height of 14 feet. Provisions of special accent or feature lighting is encouraged.

(d) Covering. Walks should be covered by marquees or other roof structures where possible and practical. Roofed and walled passageways between or through buildings shall be ample in width, as determined by the community development director (width as proportioned to length) and night lighted. [Ord. 1170 § 7, 1996; Ord. 696 § 1(J), 1987.]

Chapter 18.25

B-P BUSINESS PARK ZONE

Sections

18.25.010 Purpose of zone.

(1) The primary purpose and objective of the business park (B-P) zone is to provide areas of the city for development of compatible business, professional office, light industrial, research and development, service uses, wholesale trade, and limited retail uses. Such uses shall be developed within master planned sites in park-like settings pursuant to development standards.

(2) It is the purpose of this zone to ensure compatibility between business parks and adjacent uses in terms of height, bulk, scale, and design; to mitigate potential adverse environmental impacts and nuisance effects on-site and off-site through careful planning, the use of buffering and screening, and the imposition of environmental performance standards and appropriate off-site mitigation requirements; to provide for the planned economic development of the city; to ensure that business park development is coordinated with the provision of adequate infrastructure by private applicants and the city, such as roads, drainage, and other utility systems; to require that business park developments pay their fair share of the costs of needed services and facilities; and to ensure that development occurs consistent with the goals and policies of the City of Des Moines Comprehensive Plan.

(3) Further, it is the purpose of this zone to establish standards to ensure that development occurs in a manner that is compatible with the Des Moines Creek Park, Des Moines Creek

Trail, Steven J. Underwood Memorial Sports Park, City of Des Moines Senior Center and adjacent residential-designated properties. [Ord. 1545 § 2, 2012: Ord. 1260 § 1, 2000: Ord. 1237 § 7, 1999: Ord. 920 § 1, 1991.]

18.25.020 Permitted uses.

Only those uses listed below shall be permitted in the B-P zone. Each use is more fully described in the "North American Industry Classification System" (hereinafter "NAICS"), 2007 Edition, published by the United States Office of Management and Budget. A copy of the 2007 Edition of the NAICS shall be maintained on file in the office of the city manager or designee and shall be available for public inspection. The numbers in parentheses following each of the following listed uses refer to the NAICS code numbers:

(1) Services, limited to the following:

(a) Administrative support services (561);

(b) Professional, scientific, and technical services (54);

(c) Management of companies and enterprises (55);

(d) Health care services (621); provided, that this use is prohibited north of South 200th Street;

(e) Repair services (8112, 8113 and 8114);

(f) Personal services (812);

(g) Recreation services (711310, 712110, 712120, 712190, 713940, and 713990); provided, that these uses are prohibited north of South 200th Street;

(h) Real estate institutions and rental services (53);

(i) Publishing, telecommunications, Internet service providers, and data processing services (51);

(j) Educational services (6114, 6115, 6116 and 6117);

(k) Religious, business and professional associations (813); provided, that these uses are prohibited north of South 216th Street;

(2) Finance and insurance services (52);

(3) Light manufacturing, fabrication, and assembly of the following and closely related products:

(a) Food products (3114, 3117, 3118, 3119, 3121);

(b) Apparel manufacturing (315);

(c) Wood products manufacturing (3219);

(d) Furniture and related products manufacturing (337);

(e) Pharmaceutical and medicine manufacturing (3254);

(f) Computer and electronic product manufacturing (334);

(g) Electrical equipment and components manufacturing (335);

(h) Fabricated metal products manufacturing (3321, 3322, 3323, 3325, 3326, 3327);

(i) Medical equipment and supplies manufacturing (3391);

(j) Printing and related support activities (323);

(k) Stone, clay, glass, ceramics, pottery, china manufacturing (3271 and 3272);

(l) Toys, jewelry, and other miscellaneous manufacturing (3399);

(4) Building and special trade contractors (23);

(5) Retail trade, limited to the following:

(a) Restaurants (722);

(b) Building material and garden equipment and supplies dealers (444);

(c) General merchandise stores (452 and 445); provided, that these uses are prohibited north of South 200th Street;

(d) Furniture and home furnishing stores (442);

(e) Electronic and appliance stores (443);

(6) Public facilities, including the following:

(a) Public parks (no NAICS code);

(b) Public administration (92);

(c) Public utilities (221121, 221122, and 221210);

(7) Transportation and wholesale trade, limited to the following:

(a) Wholesale trade (42); provided, that 4235 is prohibited;

(b) Motor freight transportation (484);

(c) Support activities for freight transportation (4884, 4885, 4889);

(d) Courier and postal services (492 and 493);

(8) Operation of foreign trade zones limited to the uses listed in this section. [Ord. 1545 § 3, 2012: Ord. 1412 § 1, 2007: Ord. 1260 § 2, 2000: Ord. 1237 § 3, 1999; Ord. 1199 § 1, 1997: Ord. 920 § 2, 1991.]

18.25.030 Master plan submittal requirements.

(1) Master Plan Required. All development within the B-P zone shall be consistent with an approved master plan.

(2) Contents of Master Plan. Each master plan shall consist of the following:

(a) Site plans illustrating planned development at a maximum scale of 1:40, including the following:

(i) Boundaries, dimensions, and acreage of the site;

(ii) Location of lot lines, rights-of-way, easements, and tracts within the site;

(iii) Location and nature of planned improvements to the vehicular and pedestrian circulation system within and abutting the site;

(iv) Location of planned buildings, structures, parking areas, and other improvements within the site;

(v) Location of proposed landscaped areas, recreation areas, and areas to be left undisturbed;

(b) Conceptual landscaping plans for all exterior boundaries, internal streets, and common open space areas. The landscaping plans shall be prepared by a licensed landscape architect and drawn at a maximum scale of 1:20;

(c) Conceptual utilities plan prepared by a licensed professional engineer and drawn at a maximum scale of 1:20;

(d) Covenants, conditions, and restrictions proposed by the applicant to control future development of the area subject to the master plan; and

(e) A sign program indicating the general location, dimensions, height, and materials of signs consistent with the requirements for a comprehensive sign review provided in article III of chapter 18.42 DMMC.

(3) Master Plan Submittal Requirements. The following information shall be submitted for review and approval of a proposed master plan in such form as required by the city manager or designee:

(a) Subdivision application (if applicable);

(b) Environmental checklist;

(c) Vicinity map(s) showing existing conditions within and surrounding the site including: land uses, zoning, buildings, vehicular and pedestrian circulation systems, existing topography indicated with five-foot contours, environmentally critical areas, and significant natural vegetation. The vicinity map shall be drawn at a maximum scale of 1:100;

(d) A proposed master plan containing the elements listed in subsection (2) of this section;

(e) A narrative description of the proposal, including a discussion of how it is consistent with Des Moines Comprehensive Plan and applicable provisions of the zoning code, Title 18 DMMC; how the proposal relates to other potential business parks in the vicinity; how any off-site environmental impacts will be mitigated; and a description of planned improvements, including the maximum site coverage, maximum gross square feet of occupiable floor area and the maximum floor area to be occupied by different types of uses, maximum building height for each building location, the nature and extent of off-site improvements, and development phasing; and

(f) A traffic analysis and report indicating the following: current and future traffic volumes and levels of service on the street system; planned and programmed traffic improvements and their relationship to any adopted state, local, and/or regional transportation plans or programs; anticipated traffic volumes and distribution; impacts generated by the proposal on future traffic volumes and levels of service; measures necessary to mitigate the proposal's effects on traffic and traffic systems, including the proposal's pro rata

share of identified traffic improvements; a proposed transportation demand management (TDM) plan to reduce traffic impacts; and such other information as may be required by the city.

(4) Amendments to Approved Master Plans.

(a) Minor amendments to an approved master development plan may be approved by the city manager or designee if the amendment meets the development standards and criteria applicable to the zoning and requirements set forth in this section. Minor amendments include any revision or modification of the previously approved master development plan that would result in any one or more of the following:

(i) An increase in the square footage of any proposed building or structure of greater than 10 percent but less than 15 percent; or

(ii) A change in the number of new parking spaces, parking spaces created by restriping existing parking areas and/or a combination of both, except for an increase in parking spaces for bicycles or electric vehicles or carpools, that is greater than 10 percent but less than 15 percent; or

(iii) A change in the original phasing timeline for mitigation of the master development plan; or

(iv) Changes to building placement when located outside of the required setbacks and any required setbacks for critical areas; or

(v) A cumulative increase in impervious surface that is greater than 10 percent but less than 15 percent or a cumulative decrease in tree cover that is greater than 10 percent and less than 15 percent.

(b) Major amendments are changes that exceed the thresholds for a minor amendment or were not analyzed as part of an approved master development plan. Major amendments to an approved master development plan shall be processed as a new master plan.

(c) Amendments for Adjacent Properties. Applicants for business park proposals adjacent to property covered by an approved master plan may request an amendment to the master plan to incorporate their proposed development. Such proposals shall be consistent with the approved master plan and shall be processed as a new master plan. [Ord. 1545 § 4, 2012: Ord. 1260 § 3, 2000: Ord. 920 § 3, 1991.]

18.25.035 Business park submittal requirements and approval process for the South subarea.

Repealed by Ord. 1545. [Ord. 1260 § 4, 2000.]

18.25.040 Property development standards.

(1) Minimum Site Area.

(a) The minimum area of a master plan shall be two acres. Master plans containing less than the minimum area shall be allowed only if the site adjoins a previously approved master plan.

(2) Maximum Site Coverage. Buildings, parking areas, and other paved or graveled surfaces, exclusive of public rights-of-way and recreation areas developed and accessible to the public, shall cover no more than 75 percent of the building site.

(3) Maximum Height. The maximum height of buildings and structures shall be as set forth below:

(a) For properties north of South 200th Street, the maximum building height shall be 35 feet as measured from the average finish grade as defined in DMMC 18.04.320.

(b) For properties north of South 216th Street, the maximum building height shall be 75 feet as measured from the average finish grade as defined in DMMC 18.04.320.

(c) For properties south of South 216th Street, the maximum building height shall be 35 feet as measured from the average finish grade as defined in DMMC 18.04.320.

(4) Minimum Setbacks. All structures, parking areas, and loading areas shall maintain minimum setbacks from property lines as set forth below:

(a) Perimeter of building sites abutting any street classified as a major arterial, a secondary arterial or collector by the city's com-

prehensive transportation plan, as presently constituted or as subsequently amended, and/or abutting any property designated as multifamily by the Des Moines Comprehensive Plan, as presently constituted or as subsequently amended: 20 feet;

(b) Perimeter of building sites abutting any property designated as single-family residential by the Des Moines Comprehensive Plan, as presently constituted or as subsequently amended: 30 feet;

(c) Perimeter of building sites abutting any street other than a major arterial, secondary arterial, or collector: 15 feet;

(d) Perimeter of building sites, other than those abutting a street or residential designated property: 10 feet. [Ord. 1545 § 5, 2012: Ord. 1260 § 5, 2000: Ord. 920 § 4, 1991.]

18.25.050 Performance standards.

Every use permitted within the B-P zone pursuant to this chapter shall conform to the following performance standards:

(1) Nuisances. No use, activity, or equipment shall be permitted which creates a nuisance or is offensive, objectionable, or hazardous by reason of creation of odors, noise, sound, vibrations, dust, dirt, smoke, or other pollutants, noxious, toxic, or corrosive fumes or gases, radiation, explosion or fire hazard, or by reason of the generation, disposal, or storage of hazardous or dangerous wastes or materials.

(2) Hazardous Waste and Hazardous Substances.

(a) A use permitted by this chapter that involves hazardous waste storage or the use or handling of hazardous substances shall comply with all applicable regulations to include chapter 70.105 RCW (Hazardous Waste Management) and chapter 70.109D RCW (Hazardous Waste Cleanup – Model Toxics Control Act).

(b) On-site hazardous waste disposal facilities shall be prohibited.

(c) The use or handling of hazardous substances is permitted as an accessory use only; provided, that the transport, storage, containment, application, and disposal of such hazardous substances shall be performed so as not to jeopardize the health and safety of an individual or harm the environment.

(3) Outdoor Storage.

(a) Outdoor storage shall only be allowed as an accessory use to another principal use.

(b) The material(s) being stored shall not exceed 12 feet in height as measured from the high point of the outdoor storage area.

(c) The material(s) being stored shall be wrapped or enclosed to prevent wind-blown debris.

(d) The outdoor storage area shall not exceed 40 percent of the building footprint or 15 percent of the lot area, whichever is less.

(e) Outdoor storage shall be screened from adjacent properties by a 12-foot landscaped buffer. The buffer shall contain at least 75 percent coniferous trees of a minimum size of six feet at planting. Deciduous trees shall be a minimum of two-and-one-half-inch caliper as measured per ANSIZ 60.1-2004. All trees shall be planted no less than 20 feet apart on-center. For every 16 square feet of buffer area, at least one evergreen shrub of a minimum size of two feet shall be provided. Ground cover of a minimum one-gallon size shall be planted in the buffer area sufficient to cover the area within three years of planting. Landscaping shall not serve as a substitute for the required setbacks of the underlying zoning.

(f) Outdoor storage areas adjacent to public streets and to future or existing bicycle or pedestrian paths shall be screened by a minimum of a six-foot masonry wall in addition to the landscaping requirements established by subsection (3)(e) of this section. The screening wall shall be set back a maximum distance of 15 feet from the property line. The height of the wall shall be measured from the high point of the outdoor storage area.

(g) Outdoor storage shall only be allowed between the rear lot line and the extension of the front facade of the principal structure, provided no outdoor storage is allowed between a building and a side street lot line.

(h) The city manager may modify the requirements for spacing, number and size of plantings upon a satisfactory showing by a

licensed landscape architect that an alternate proposal will accomplish the same buffering goals.

(4) Warehouse, light manufacturing and distribution facilities shall comply with the following additional standards:

(a) Loading areas shall be set back, recessed and/or screened so as not to be visible from adjacent public rights-of-way or properties designated as residential by the City of Des Moines Comprehensive Plan.

(b) Loading areas shall only be allowed between the rear lot line and the extension of the front facade of the principal structure, provided no loading areas are allowed between a building and a side street lot line.

(c) The office portion of a warehouse use shall be oriented towards the adjacent public street with the highest classification as determined by the city's comprehensive transportation plan, as presently constituted or as subsequently amended.

(d) The portion of a building visible from public rights-of-way shall be architecturally treated to break up the box-like look of the buildings.

(e) The building(s) shall be designed and oriented to locate the shorter width of the building towards the public right-of-way.

(f) The main entries to the building shall portray a quality office appearance while being architecturally related to the overall building composition.

(5) All uses shall conform to the off-street parking and loading area requirements set forth in chapter 18.44 DMMC, or as hereinafter amended; provided, however, employee parking may be reduced through implementation of a commute trip reduction program consistent with the requirements of chapter 16.16 DMMC.

(6) Landscaping.

(a) All developments shall conform to the landscaping and buffering requirements set forth in chapter 18.41 DMMC.

(b) Landscaping shall be designed to achieve an aesthetically pleasing park-like setting; integrate landscaping in master plan design; preserve significant trees, particularly tree clusters; reinforce the relationship to its natural setting; soften building masses; provide visual screening from, and provide transition to, adjacent residential areas, and noise and wind buffering; define automobile and pedestrian circulation patterns; maintain and strengthen public vistas; provide screening for on-site parking areas, and refuse and recycling receptacles; create functional and accessible active and passive outdoor activity spaces; and create linkages, where feasible, to city and regional parks and trail systems.

(7) Parking Facilities. Parking facilities that are not an accessory use to another permitted use but are the primary use on the site shall be located in a multistory parking structure. Surface parking shall not be used to provide paid parking facilities.

(8) Manufacturing Uses. All master plan sites which contain manufacturing uses as established by the NAICS shall provide a six-foot-tall masonry wall or wood fence along the property lines which abut properties designated as residential by the City of Des Moines Comprehensive Plan.

(9) Trash and Recycling Receptacles. Trash and recycling receptacles shall be a minimum of 15 feet from any properties designated as residential by the City of Des Moines Comprehensive Plan.

(10) Solid Waste. All solid waste materials shall be transported to an official landfill waste disposal site or recycling center. No such materials shall be disposed of on site.

(11) Liquid Waste Disposal.

(a) Liquid waste materials except potable water shall not be disposed of on site; however, where such materials are temporarily stored on the property, they shall be contained in a manner so as to prevent their entry into the surface water drainage system and/or any ground water aquifer.

(b) Temporary storage of liquid waste materials shall comply with DMMC 18.86.240 for sites located within critical aquifer recharge areas.

(12) Exterior Mechanical Devices. Air conditioners, heating, cooling, ventilating equipment, pumps and heaters and all other mechanical devices shall be screened from surrounding properties and streets and shall com-

ply with the maximum environmental noise levels set out in chapter 173-60 WAC as presently constituted or as may be subsequently amended.

(13) Exterior Lighting.

(a) Lighting shall comply with the Zone 3 requirements for exterior light established by the 2009 Washington State Energy Code as presently adopted or as subsequently amended.

(b) Lighting shall be fully shielded in such a manner that the bottom edge of the shield shall be below the light source so no light is emitted above the horizontal plane of the lighting fixture.

(c) Ground-mounted floodlighting shall only be used to illuminate landscaping areas, accentuate key architectural features or illuminate flag poles.

(d) Exterior lighting shall provide a minimum of at least 1.5 foot candles for parking lots and walkways.

(e) Exterior lighting shall be less than 0.2 foot candle at the property lines which abut properties designated as single-family, multifamily, or park by the Des Moines Comprehensive Plan.

(f) A photometric plan and exterior lighting summary shall be submitted as part of the building permit application.

(14) Site Design.

(a) Sites shall provide for convenient pedestrian linkages to abutting streets and/or trails.

(b) Sites shall not gain access from a right-of-way classified as a local street in the city's comprehensive transportation plan, chapter 4.

(15) Public Services and Utilities.

(a) All pre-existing and newly installed utilities on site, within abutting rights-of-way, and extended to the site, shall be placed underground.

(b) All development shall be required to install or pay for a proportional share of any new facilities or utilities required to serve the development. Mechanisms such as in-lieu fees, latecomer's agreements, and impact fees may be used to equitably distribute the cost of required improvements.

(c) All public services and utilities must be adequate to support the proposed master plan development, including but not limited to drainage; street and walkway systems, both on site and off site; sewer and water systems; fire protection; police service; electrical power; and telecommunications.

(d) Drainage systems shall be designed to be consistent with the surface water design manual for the city, and shall be consistent with drainage studies or plans for the applicable basin.

(e) All traffic impacts directly caused by a proposed business park shall be mitigated by the applicant.

(16) Existing single-family residential structures located in the BP zone shall not be used for any business other than a home occupation business as further described in DMMC 18.08.020. [Ord. 1545 § 6, 2012: Ord. 1260 § 6, 2000: Ord. 1237 § 3, 1999; Ord. 1199 § 2, 1997: Ord. 920 § 5, 1991.]

18.25.060 General site design guidelines for business park development.

Repealed by Ord. 1545. [Ord. 1260 § 7, 2000: Ord. 1237 § 3, 1999; Ord. 920 § 6, 1991.]

18.25.070 General building design guidelines for business park development.

Buildings and structures constructed within the site of an approved master plan or site plan shall conform to the following design guidelines:

(1) Buildings shall be appropriate in scale and in harmony with neighboring development.

(2) Building design shall be compatible with the site and with adjoining buildings. Building modulation and other design techniques to add architectural interest and minimize building mass shall be used. Variety in detail, form, and siting shall be used to provide visual interest.

(3) Building components such as windows, doors, eaves, and parapets shall be in proportion to each other.

(4) Colors shall be harmonious, with bright or brilliant colors used only for accent.

(5) Mechanical equipment shall be integrated in building design or screened from on-site and off-site views.

(6) Exterior lighting fixtures and standards shall be part of the architectural concept and harmonious with building design.

(7) Signs shall be integrated with and enhance the overall planning and design of the business park. Size, materials, color, lettering, location, number, and arrangement shall be harmonious with building design. Colors shall be used harmoniously and with restraint. Excessive brightness and brilliant colors shall be avoided. Flush-mounted channel letter signs are preferred. Box signs, if used, shall have negative lettering only.

(8) Buildings shall be designed to provide adequate and conveniently located space for recycling containers. [Ord. 1260 § 8, 2000: Ord. 920 § 7, 1991.]

18.25.080 Recreation area study required.

Repealed by Ord. 1545. [Ord. 1404 § 1, 2007: Ord. 1260 § 9, 2000: Ord. 920 § 8, 1991.]

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Chapter 18.26

C-C COMMUNITY COMMERCIAL ZONE

Sections

18.26.010 Purpose of zone.

(1) The primary purpose of the community commercial zone is to enhance, promote and maintain community oriented business areas.

(2) It is the further purpose of this zone to:

(a) Ensure land use compatibility among businesses in terms of permitted uses, building height, bulk, scale;

(b) Provide a commercial area that reflects its community-oriented function;

(c) Serve the general public; and

(d) Ensure that development occurs consistent with the goals, policies, and implementation strategies of the Greater Des Moines Comprehensive Plan.

(3) It is the further purpose of this zone to ensure consistent administration of the provisions of this chapter and to recognize the hearing examiner as the appropriate party for appeal of administrative decisions. [Ord. 1237 § 3, 1999; Ord. 1218 § 1, 1998: Ord. 697 § 2, 1987.]

18.26.020 Permitted uses.

Any use permitted in the D-C zone with the exception of the following:

(1) Boat building and repairing (3732).

(2) Water transportation uses.

(3) Fish hatcheries and preserves (092).

(4) Boat cleaning.

(5) Mixed use.

(6) Public automobile parking (7521). [Ord. 1237 § 3, 1999; Ord. 1218 § 2, 1998: Ord. 1170 § 4, 1996; Ord. 1140 § 5, 1995: Ord. 697 § 3, 1987.]

18.26.030 Environmental performance standards and general limitations.

(1) Every use permitted within the C-C zone pursuant to this chapter shall conform to the following general limitations and standards:

(a) As provided by chapter 9.64 DMMC, no use, activity, or equipment shall be permitted that creates a nuisance or is offensive, objectionable, or hazardous by reason of creation of odors, noise, sound, vibrations, dust, dirt, smoke, or other pollutants, noxious, toxic, or corrosive fumes or gases, radiation, explosion or fire hazard, or by reason of the generation, disposal, or storage of hazardous or dangerous wastes or materials in a manner(s) inconsistent with Title 70 RCW as presently constituted or as may be subsequently amended;

(b) Accessory uses are permitted that are customarily appurtenant or incidental to the principally permitted uses;

(c) Landscaping and fencing are required in accordance with chapter 18.41 DMMC;

(d) All uses shall be primarily contained within an enclosed structure except the following:

(i) Outdoor seating and dining;

(ii) Signs;

(iii) Off-street parking, drive-through facilities, and loading areas;

(iv) Motor vehicle fuel pumps;

(v) Display of merchandise sold on site;

(vi) Boat storage;

(vii) Play/recreation areas; and

(viii) Miscellaneous storage when limited to 25 percent of the site area and when perimeter landscaping and fencing is provided;

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(e) In reviewing a proposed permitted use, the community development director may waive or include minimal conditions as may be reasonably needed to ensure that the use is consistent with the purpose of the C-C zone, and to minimize the likelihood of adverse impacts.

(2) Adult entertainment facilities and adult motion picture theaters are not permitted in the C-C zone.

(3) Automobile repair, car washes, automobile service stations, uses with drive-through facilities, and similar uses shall conform to the following limitations and standards:

(a) Automobile repair and the installation of automobile parts and accessories shall be primarily contained within an enclosed structure;

(b) Unless specifically authorized by the community development director, vehicular access shall be limited to one driveway per street frontage;

(c) Motor vehicle fuel pump islands shall be set back a minimum of 15 feet from property lines;

(d) A six-foot high, 100 percent sight-obscuring fence shall be provided along property lines that abut residentially zoned properties, unless waived by the residential property owner prior to building permit issuance; and

(e) Vehicle storage shall be limited to those vehicles contracted for repair or service.

(4) Welding repair (7692) is only permitted in an enclosed structure.

(5) All products which are manufactured, processed, or treated on the premises must also be sold at retail to the general public on-site.

(6) Social service facilities shall conform to the following limitations and standards:

(a) Outdoor play/recreation areas for children shall be set back a minimum of five feet from property lines;

(b) Unless specifically authorized by the community development director, passenger loading and unloading areas shall be provided on-site. [Ord. 1237 § 3, 1999; Ord. 1218 § 3, 1998: Ord. 697 § 4, 1987.]

18.26.040 Conditional uses.

The following uses may locate in a C-C zone subject to issuance of a conditional use permit as provided in the hearing examiner code:

General conditional uses as listed in DMMC 18.32.030 and in accordance with DMMC 18.32.040 through 18.32.060. [Ord. 1218 § 4, 1998: Ord. 793 § 8, 1989: Ord. 697 § 5, 1987.]

18.26.050 Uses requiring unclassified use permit.

Uses requiring an unclassified use permit in a C-C zone are as follows:

(1) Mixed use;

(2) Other uses requiring an unclassified use permit as itemized in DMMC 18.32.020 and as otherwise provided in chapter 18.32 DMMC. [Ord. 1374 § 2, 2006: Ord. 1218 § 5, 1998: Ord. 697 § 6, 1987.]

18.26.055 Hazardous waste and hazardous substances.

Any use permitted by this chapter which involves the treatment or storage of hazardous waste or the use or handling of hazardous substances shall conform to the regulations contained in this section. In the event there is a conflict between the provisions of this section and any other provision of this chapter, the provisions of this section shall prevail.

(1) Off-site hazardous waste facilities are prohibited.

(2) On-site hazardous waste facilities are permitted as an accessory use only; provided, that the location of such facilities shall be consistent with siting criteria adopted or hereafter amended by the Department of Ecology under RCW 70.105.210 incorporated in this chapter by reference and that the transport, storage, containment, treatment, or disposal of such hazardous wastes shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

(3) The use or handling of hazardous substances are permitted as an accessory use only; provided, that the transport, storage, containment, application and disposal of such hazardous substances shall be performed so as not to

jeopardize the health and safety of any individual or harm the environment.

(4) Violation – Civil Penalty, Revocation of Business License. Failure to comply with any of the requirements of this section shall result in enforcement by civil penalty as set forth in DMMC 18.72.060 and revocation of business license as set forth in DMMC 5.04.060.

(5) Violation – Abatement Authorized. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 757 § 4, 1988.]

18.26.060 Dimensional standards.

(1) Height. Maximum building height is 35 feet.

(2) Setbacks. Placement of buildings and structures including additions to existing buildings or structures, excluding signs, shall maintain minimum setbacks established by the department of community development based on the following criteria:

(a) When the front or side lot line abuts the public right-of-way, the building or structure shall abut the public right-of-way unless:

(i) Subsection (2) of this section requires that the building or structure be set back; or

(ii) Through the permitting process, the community development director finds it is in the public interest to allow the proposed building or structure to be set back from the right-of-way. In considering a request for a setback, the director shall consider matters such as adopted land use policies, vehicular and pedestrian circulation, landscaping, existing site improvements, adjacent site improvements, and public benefit features such as plazas and public artwork. Decisions of the director regarding setbacks are appealable to the hearing examiner pursuant to chapter 18.94 DMMC.

(b) Where any lot line lies adjacent to a public right-of-way or private street and residentially zoned property lies adjacent to such public right-of-way or private street, or when the lot line abuts a residentially zoned property, a minimum building or structure setback of 10 feet shall be maintained.

(3) Parking in the C-C zone shall be provided pursuant to chapter 18.44 DMMC.

(4) Underground structures are permitted in all required setback areas. [Ord. 1218 § 6, 1998.]

18.26.070 General site design requirements.

Development within the C-C zone shall conform to the following site design requirements:

(1) Walkways. Paved pedestrian walkways shall be provided on-site on newly developed properties or materially remodeled, enlarged, or repaired to the extent of 50 percent of the market value as specified below:

(a) Pedestrian walkways shall be provided at or around building(s) of sufficient extent to provide safe pedestrian passage. A minimum six-foot walkway shall be provided adjacent to the principal building entrance(s);

(b) A minimum six-foot pedestrian walkway shall be provided that connects walkways at the building to the street sidewalks. Where no street sidewalk exists, the connecting walkway shall extend to the public right-of-way;

(c) Walkways and sidewalks shall be differentiated from vehicular circulation or vehicular parking areas as approved by the community development director;

(d) Walkways shall conform with all applicable provisions of chapter 51-10 WAC, Barrier-free Facilities, as presently constituted or as may be subsequently amended; and

(e) Lighting shall be provided where stairs, curbs, ramps, or abrupt changes in walkway direction occur.

(2) Parking and Loading Areas. All uses shall conform to the off-street parking provi-

sions and loading area provisions set forth by chapter 18.44 DMMC.

(3) Vehicular Access and Other Right-of-Way Improvements. Vehicular access and other right-of-way improvements shall conform to the provisions of Title 12 DMMC.

(4) Uses Within the Right-of-Way. Sidewalk cafes, vendors, and similar temporary commercial uses within the public right-of-way shall conform to the provisions of Title 12 DMMC and the following provisions:

(a) A minimum of six feet of unobstructed sidewalk shall be maintained;

(b) The applicant shall demonstrate proof of public liability insurance and consent to a public place indemnity agreement;

(c) The duration of right-of-way use permits for commercial purposes shall be limited to one year. Applicants may reapply for right-of-way use permits;

(d) Sale or consumption of alcoholic beverages is prohibited;

(e) Applications for right-of-way use permits for commercial purposes shall include the following information:

(i) Proposed items to be placed within the right-of-way, such as seating, tables, fencing, vending carts, etc.;

(ii) Proposed activities to occur within the right-of-way, such as dining, amplification of music, preparation and sale of food or beverage items, etc.;

(iii) Proposed periods of operation, including months of the year, days of the week, hours, etc., and

(iv) Proposed source(s) of utilities such as electrical power;

(f) Applicants must immediately clear the public right-of-way when ordered to do so by city authorities for reasons of public health or safety; and

(g) In reviewing a proposed use within the public right-of-way, the community development director may include conditions as may reasonably be needed to endure that the use is consistent with the purpose of the C-C zone, and to minimize the likelihood of adverse impacts. The community development director shall deny the request if it is determined that adverse impacts cannot be mitigated satisfactorily.

(5) Landscaping. All uses shall conform to the landscaping and screening provisions set forth by chapter 18.41 DMMC.

(6) Outdoor Uses. Outdoor activities such as sales, display, storage, dining, etc., shall not obstruct vehicular or pedestrian visibility or movement. [Ord. 1237 § 3, 1999; Ord. 1218 § 7, 1998.]

18.26.080 General building design requirements.

Development within the C-C zone shall conform to the following building design requirements:

(1) Structural encroachments into the right-of-way, such as cornices, signs, eaves, sills, awnings, bay windows, balconies, facade treatment, marquees, etc., shall conform to the provisions set forth by Title 12 DMMC, the Uniform Building Code, and the following provisions:

(a) Structural encroachments into the right-of-way shall be capable of being removed without impact upon the structural integrity of the primary building;

(b) Structural encroachments into the right-of-way shall not result in additional building floor area than would otherwise be allowed;

(c) Except for awnings, signs, and marquees, the maximum horizontal encroachment into the right-of-way shall be two feet;

(d) The maximum horizontal encroachment in the right-of-way by signs shall be four feet;

(e) The maximum horizontal encroachment in the right-of-way by awnings and marquees shall be six feet;

(f) The minimum horizontal distance between the structural encroachment and the curbline shall be two feet;

(g) Except for awnings over the public sidewalk which may be continuous, the maximum length of each balcony, bay window, or similar feature that encroaches the right-of-way shall be 12 feet;

(h) The applicant shall demonstrate proof of public liability insurance and consent to a public place indemnity agreement;

(i) Owners of structural encroachments into the right-of-way must clear the public right-of-way when ordered to do so by city authorities for reasons of public health or safety; and

(j) In reviewing a proposed structural encroachment into the public right-of-way, the community development director may include conditions as may be reasonably needed to ensure that the structure is consistent with the purpose of the C-C zone, and to minimize the likelihood of adverse impacts. The community development director shall deny the request if it is determined that adverse impacts cannot be mitigated satisfactorily.

(2) Pedestrian entrances to commercial uses at street level shall conform to all applicable provisions of chapter 51-10 WAC, Barrier-free Facilities, as presently constituted or as may be subsequently amended.

(3) The width of all floors above the second level floor shall not exceed 80 percent of the width of the street level floor. [Ord. 1237 § 3, 1999; Ord. 1218 § 8, 1998.]

18.26.090 Appeal from administrative decisions.

A person aggrieved by an administrative decision made under this chapter may appeal such decision to the hearing examiner in accordance to the hearing examiner code by filing a written notice of appeal that must be filed within 10 days of such decision. [Ord. 1218 § 9, 1998.]

Chapter 18.27

D-C DOWNTOWN COMMERCIAL ZONE

Sections

18.27.010 Purpose of zone.

(1) The primary purpose and objective of the downtown commercial (D-C) zone is to enhance, promote, and encourage development within the marina district.

(2) It is the further purpose of this zone to: (a) ensure land use compatibility among businesses and residences in terms of permitted uses, building height, bulk, scale; (b) provide a downtown that reflects its waterfront location; and (c) ensure that development occurs consistent with the goals, policies, and implementation strategies of the City of Des Moines Comprehensive Plan. [Ord. 1514 § 2, 2011: Ord. 1237 § 3, 1999; Ord. 1104 § 1, 1994.]

18.27.020 Permitted uses.

Only those uses listed below, and uses similar in nature as determined by the city manager or designee, may be permitted in the D-C zone. Each use is more fully described in the Standard Industrial Classification Manual. Listed uses may be otherwise conditioned in this code. The numbers in parentheses following each of the following listed uses refer to the Standard Industrial Classification (SIC) code numbers:

(1) Horticultural specialties limited to community gardens and pea patches by membership (018);

(2) Veterinary services for animal specialties (0742) and dog grooming (0752);

(3) Landscape and horticultural services (078);

(4) Fish hatcheries and preserves (092), limited to those properties that abut or are within the intertidal area of Puget Sound;

(5) Art glassware made in glassmaking plants (3229);

(6) Photocopying and duplicating services (7334);

(7) Art and ornamental ware, pottery (3269);

(8) United States Postal Service facilities (4311);

(9) Marinas (4493);

(10) Arrangement of passenger transportation (472);

(11) Retail trade, with ancillary wholesale trade, limited to the following:

(a) Building materials, hardware, and garden supply, except mobile home dealers (52);

(b) General merchandise stores (53);

(c) Food stores (54);

(d) Gasoline service stations, and other alternative motor vehicle fuels (5541);

(e) Apparel and accessory stores (56);

(f) Home furniture, furnishings, and equipment stores (57);

(g) Eating and drinking places (58); and

(h) Miscellaneous retail (59), except fuel dealers (598);

(12) Finance, insurance, and real estate institutions and services (60-67);

(13) Services, limited to the following:

(a) Hotels and motels (701);

(b) Personal and business services, with ancillary wholesale trade (72-73), except the following:

(i) Industrial launderers (7218);

(ii) Billboard advertising (7312);

(iii) Heavy construction equipment rental and leasing (7353);

(iv) Industrial truck rental and leasing (7359); and

(v) Oil extraction equipment rental and leasing (7359);

(c) Automobile parking (7521) limited to properties that are municipally owned or operated or controlled by a city-sanctioned business neighborhood association and provided that facilities for parking are constructed and maintained to meet minimum required parking improvements specified in chapter 18.44 DMMC within three years of the commencement of such use;

(d) General automotive repair shops (7538);

(e) Car washes (7542);

(f) Miscellaneous repair services (76), except the following:

(i) Tank and boiler cleaning service (7699); and

(ii) Tank truck cleaning service (7699);

(g) Motion picture services (78);

(h) Amusement and recreation services (79), except the following:

(i) Adult entertainment facilities and adult motion picture theaters (no SIC); and

(ii) Racing, including track operation (7948);

(i) Health services (80);

(j) Legal services (81);

(k) Educational services (82);

(l) Social services (83);

(m) Museums, art galleries, and botanical and zoological gardens (84);

(n) Membership organizations (86);

(o) Engineering, accounting, research, management, and related services (87); and

(p) Services, not elsewhere classified (89);

(14) Public administration facilities (91-97), except correctional institutions (9223);

(15) Mixed use (no SIC code); and

(16) Public parks (no SIC code). [Ord. 1514 § 3, 2011: Ord. 1493 § 1, 2010: Ord. 1237 § 3, 1999; Ord. 1104 § 2, 1994.]

18.27.030 Environmental performance standards, use restrictions, and general limitations.

(1) Every use permitted within the D-C zone pursuant to this chapter shall conform to the following general limitations and standards:

(a) As provided by chapter 9.64 DMMC, no use, activity, or equipment shall be permitted that creates a nuisance or is offen-

sive, objectionable, or hazardous by reason of creation of odors, noise, sound, vibrations, dust, dirt, smoke, or other pollutants, noxious, toxic, or corrosive fumes or gases, radiation, explosion or fire hazard, or by reason of the generation, disposal, or storage of hazardous or dangerous wastes or materials in a manner(s) inconsistent with Title 70 RCW as presently constituted or as may be subsequently amended;

(b) Accessory uses are permitted that are customarily appurtenant or incidental to the principally permitted uses;

(c) All uses shall be primarily contained within an enclosed structure except the following:

(i) Outdoor seating and dining;

(ii) Signs;

(iii) Off-street parking, drive-through facilities, and loading areas;

(iv) Motor vehicle fuel pumps;

(v) Display of merchandise sold on site; and

(vi) Play/recreation areas.

(d) In reviewing a proposed permitted use, the city manager or designee may waive or include minimal conditions as may be reasonably needed to ensure that the use is consistent with the purpose of the D-C zone, and to minimize the likelihood of adverse impacts.

(2) Home occupations shall be permitted only as an accessory use; provided, that all of the following conditions and limitations are satisfied:

(a) The principally permitted use to which the home occupation is accessory shall be a legally permitted, constructed, and conforming residential component of a mixed use development;

(b) All conditions set forth in DMMC 18.08.020(18) are satisfied.

(3) Boat storage and repair shall be permitted only as an accessory use on property principally permitted for marina use and shall conform to the following additional limitations and standards:

(a) The size and location of all boat storage facilities shall be consistent with the council-adopted marina master plan;

(b) All out-of-water boat repair shall be within a fully secured and fenced area not accessible by the general public;

(c) All boat repair work shall have containment areas and employ disposal methods for pollutants and toxic substances consistent with Puget Sound Clean Air Agency and NPDES standards;

(d) Only those boats and similar vessels that will be immediately and actively under repair shall be moved to or placed within a designated boat repair facility.

(4) Adult entertainment facilities and adult motion picture theaters are not permitted in the D-C zone.

(5) Nonconforming uses located in the D-C zone shall be allowed to continue to exist, but only to the extent, size, or scale that these uses were legally authorized or licensed to operate by the city. A property containing a single business entity that is a nonconforming use shall not be allowed to add any other use components or otherwise increase the intensity or facet of the use unless all nonconforming use elements of the property are first completely removed from the site. A property containing multiple business entities and that has one or more nonconforming uses upon it shall not be allowed to add any other use components or otherwise increase the intensity or facet of that portion of the property or building containing uses that are nonconforming unless the addition of a new use results in the complete removal of that portion of the property or building containing a nonconforming use.

(6) Automobile repair, carwashes, automobile service stations, uses with drive-through facilities, and similar uses shall conform to the following limitations and standards:

(a) Automobile repair and the installation of automobile parts and accessories shall be wholly performed within an enclosed structure approved by the building official for such occupancy;

(b) Each automotive and service repair facility shall be limited to a maximum of one service bay for each 7,500 square feet of land area per business site;

(c) Service bays shall be fully utilized to store and park vehicles contracted for repair or service;

(d) The number of vehicles stored or parked outside for repair or service shall not be greater than the minimum number of required parking stalls serving the auto repair facility pursuant to chapter 18.44 DMMC;

(e) No outside parking or storage of employee vehicles, customer vehicles, or vehicles contracted for service shall occur in any area that is not designated and approved by the city as an on-site parking stall;

(f) Motor vehicle fuel pump islands shall be set back a minimum of 15 feet from property lines;

(g) A six-foot-high, 100 percent sight-obscuring fence shall be provided along property lines that abut residentially zoned properties, unless waived by the residential property owner prior to building permit issuance.

(7) Welding repair (7692) is only permitted in an enclosed structure.

(8) Social service facilities shall conform to the following limitations and standards:

(a) Outdoor play/recreation areas for children shall be set back a minimum of five feet from property lines; and

(b) Unless specifically authorized by the city manager or designee, passenger loading and unloading areas shall be provided on site.

(9) Mixed use development shall conform to the following limitations and standards:

(a) Mixed use structures shall contain area for retail trade or personal and business services, at street level as follows:

(i) Pedestrian access from the public sidewalk to the retail trade or personal and business services shall be provided;

(ii) A minimum of 60 percent of the street level floor area shall be occupied by retail trade or personal and business services;

(iii) A minimum of 75 percent of the street level building frontage adjacent to public right(s)-of-way shall contain floor area for retail trade or personal and business services uses; and

(iv) Building space allocated for retail trade or personal and business service uses at the street level shall have a minimum gross interior depth dimension of 55 feet measured perpendicular to the property line abutting the public street(s) serving the site.

(b) The city manager or designee is authorized to consider and approve up to a 20 percent reduction of the bulk requirements specified in subsection (9)(a) of this section when a development proposal incorporates on-site parking substantially at street floor level for retail trade or personal and business service uses and the city manager or designee determines that the proposed reduction(s) does not compromise, interrupt, or interfere with the desired functionality of the building or the continuity of city pedestrian-oriented design goals in the general area and pedestrian access to the site from the public sidewalk or right-of-way.

(c) Mixed use developments shall comply with all the requirements of chapter 18.45 DMMC, except for private recreational requirements established by DMMC 18.45.020(2).

(d) A detached structure that contains residential uses and does not meet the requirements for mixed use structures is prohibited. [Ord. 1514 § 4, 2011: Ord. 1493 § 2, 2010: Ord. 1237 § 3, 1999; Ord. 1104 § 3, 1994.]

18.27.040 Dimensional standards.

(1) Maximum Building Height.

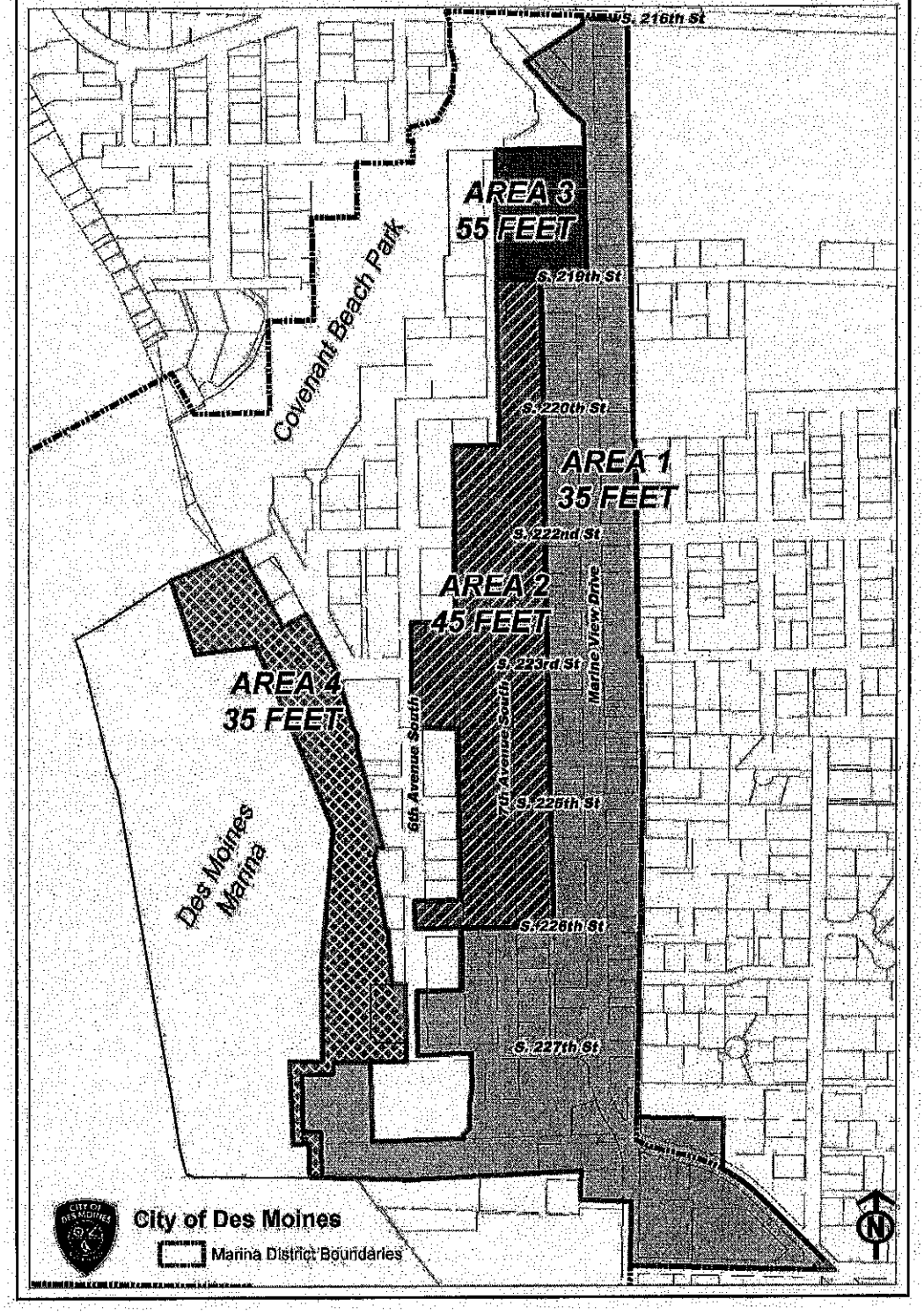
(a) Area 1 on Figure 1. The maximum building height is 35 feet as measured from the highest sidewalk grade of the north-south roadway adjacent to the property; provided, that building heights shall not be measured from 8th Avenue South or the alleys.

(b) Area 2 on Figure 1. The maximum building height is 45 feet as measured from the highest sidewalk grade of the north-south roadway adjacent to the property line; provided, that building heights shall not be measured from the alleys.

(c) Area 3 on Figure 1. The maximum building height is 55 feet as measured from the highest sidewalk grade of 7th Avenue South adjacent to the property line.

(d) Area 4 (the Des Moines Marina) on Figure 1. The maximum building height is 35 feet as measured from the Des Moines Marina Floor.

FIGURE 1
DOWNTOWN COMMERCIAL HEIGHT AREAS



(2) Building Height Bonus. In the D-C zone, the city manager or designee may authorize additional building heights as provided in this subsection:

(a) Area 1 on Figure 2. The maximum building height is 55 feet as measured from the highest sidewalk grade of the north-south roadway adjacent to the property line; provided, that building heights shall not be measured from the alleys.

(b) The total maximum number of buildings within the bonus area that can be authorized to utilize the height bonus by the city manager or designee under this section is three buildings.

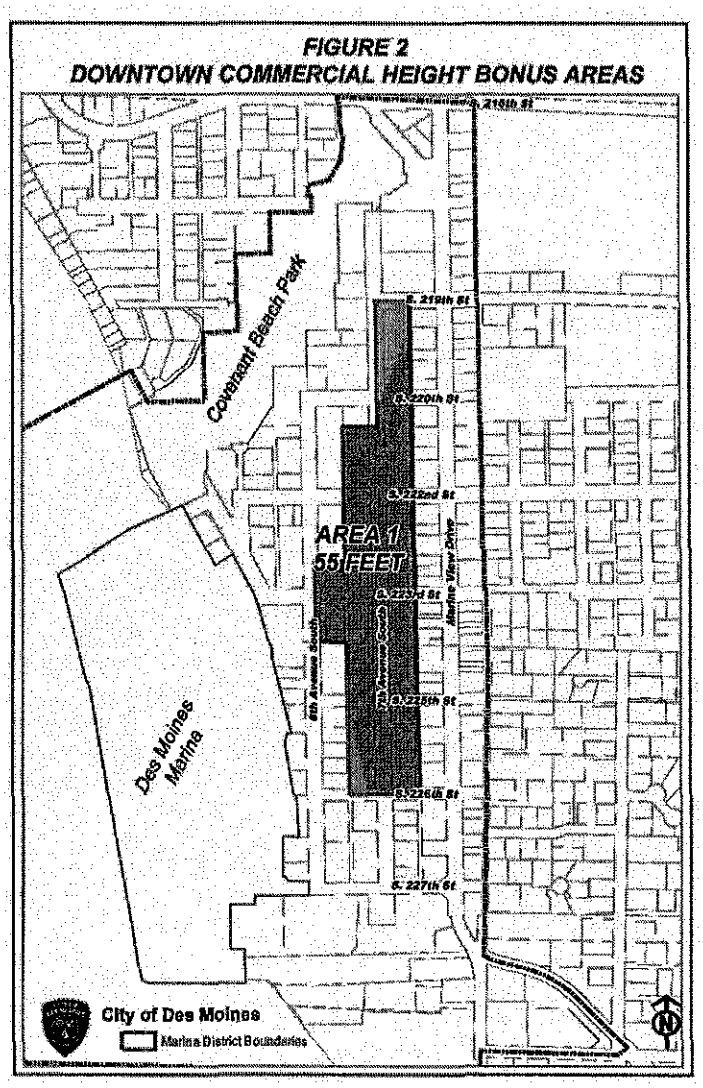
(c) The total floor area of the building does not exceed the total allowable floor area ratio as determined by DMMC 18.27.060(3).

(d) The minimum building site area is 20,000 square feet.

(e) Pedestrian oriented spaces as defined in the Marina District Guidelines are provided.

(f) The property owner shall enter into a no protest agreement regarding the formation of a Parking Business Improvement Area as regulated in chapter 35.87A RCW.

FIGURE 2
DOWNTOWN COMMERCIAL HEIGHT BONUS AREAS



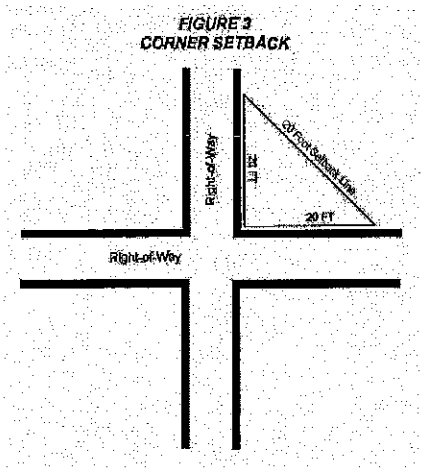
(3) Setbacks. All structures shall maintain setbacks from property lines as set forth in this subsection:

(a) Where any lot line lies adjacent to a public right-of-way or private street and residentially zoned property lies adjacent to such public right-of-way or private street, or when

the lot line abuts a residentially zoned property, a minimum building or structure setback of 10 feet shall be maintained.

(b) Corner Lot Building Setback.

(i) All buildings located on corner lots shall observe a 20-foot setback from the corner as measured from the corner of the right-of-way as illustrated in Figure 3 below:



(ii) The city manager or designee may allow encroachments into this corner setback area if the total area within the setback does not fall below 200 square feet and preserves a building setback at the corner.

(c) Underground structures are permitted in all required setback areas.

(d) All buildings adjacent to South 223rd Street and South 227th Street shall maintain a 15-foot setback from the property line adjacent to South 223rd Street or South 227th Street for that portion of the building above the third story. [Ord. 1514 § 5, 2011: Ord. 1120 § 1, 1995: Ord. 1104 § 4, 1994.]

18.27.050 General site design requirements.

Development within the D-C zone shall conform to the following site design requirements:

(1) Walkways. Paved pedestrian walkways shall be provided on site on newly developed properties or materially remodeled, enlarged, or repaired to the extent of 50 percent of the market value as specified below:

(a) Pedestrian walkways shall be provided at or around building(s) of sufficient extent to provide safe pedestrian passage. A minimum six-foot walkway shall be provided adjacent to the principal building entrance(s);

(b) A minimum six-foot pedestrian walkway shall be provided that connects walkways at the building to the street sidewalks. Where no street sidewalk exists, the connecting walkway shall extend to the public right-of-way;

(c) Walkways and sidewalks shall be differentiated from vehicular circulation or vehicular parking areas as approved by the city manager or designee;

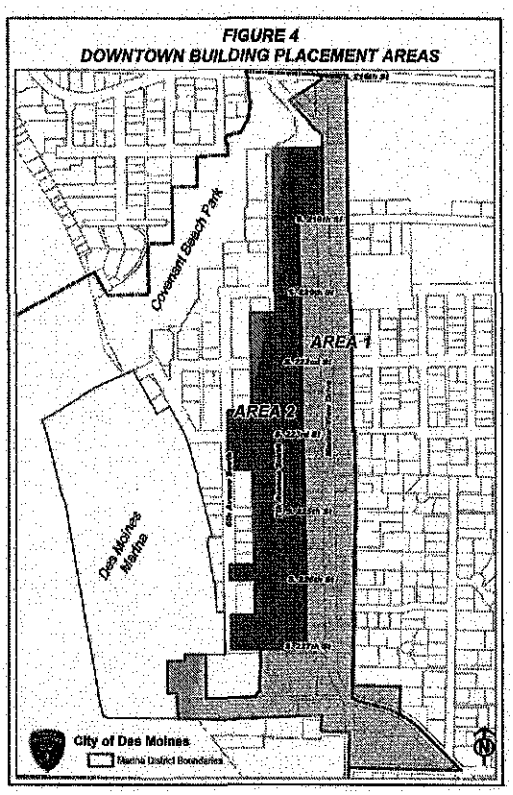
(d) Walkways shall conform with all applicable provisions of chapter 51-10 WAC, Barrier-free facilities, as presently constituted or as may be subsequently amended; and

(e) Lighting shall be provided where stairs, curbs, ramps, or abrupt changes in walkway direction occur.

(2) Placement of Buildings.

(a) Buildings or structures located in Area 1 of Figure 4 are not required to abut the adjacent sidewalk. On-site parking facilities are allowed between the building and the adjacent sidewalk.

(b) Buildings or structures located in Area 2 of Figure 4 shall be located in close proximity to the adjacent sidewalk. The area between the building and the adjacent sidewalk can be used for pedestrian oriented spaces as defined in the marina district design guidelines, outside dining, sitting areas, or landscaped open space. Parking areas are prohibited between the building and the adjacent sidewalk.



(3) Parking and Loading Areas. All properties shall conform to the off-street parking provisions and loading area provisions set forth by chapter 18.44 DMMC.

(4) Vehicular access and other right-of-way improvements shall conform to the provisions set forth by Titles 10 and 12 DMMC.

(5) Properties that have vehicular access from 8th Avenue between South 223rd Street and Kent-Des Moines Road shall provide on-site delivery unloading areas.

(6) Angled parking shall be allowed along Marine View Drive; provided, that the following standards are met:

(a) The sidewalk shall be relocated within dedicated right-of-way so that the curb face of the relocated sidewalk is located 36 feet as measured from the edge of traveled way of the nearest lane of traffic on Marine View Drive.

(b) The relocated sidewalk shall be entirely in right-of-way or newly dedicated right-of-way.

(c) The length of relocated sidewalk shall be a minimum of 100 feet, not including any sidewalk transition areas.

(d) Sidewalk transition lengths and dimensions shall be provided by the city engineer.

(e) Only head-in angled parking shall be allowed within the right-of-way on Marine View Drive, except that area of existing parallel parking on Marine View Drive shall be allowed to remain in place until the adjoining property redevelops, at which time the property owner may choose to construct angle parking in accordance with the provisions of this section, or the property owner may choose to eliminate the section of parallel parking, or the city's traffic engineer determines that a safety concern exists that necessitates removal of such parallel parking.

(f) Angled parking installed by a property owner under this section would be counted toward the total number of parking stalls required by chapter 18.44 DMMC.

(7) Uses within the Right-of-Way. Sidewalk cafes, vendors, and similar temporary commercial uses within the public right-of-way shall conform to the provisions of Title 12 DMMC and the following provisions:

(a) A minimum of six feet of unobstructed sidewalk shall be maintained;

(b) The applicant shall demonstrate proof of public liability insurance and consent to a public place indemnity agreement;

(c) The duration of right-of-way use permits for commercial purposes shall be limited to one year; applicants may reapply for right-of-way use permits;

(d) Applications for right-of-way use permits for commercial purposes shall include the following information:

(i) Proposed items to be placed within the right-of-way, such as seating, tables, fencing, vending carts, etc.;

(ii) Proposed activities to occur within the right-of-way, such as dining, amplification of music, preparation and sale of food or beverage items, etc.;

(iii) Proposed periods of operation, including months of the year, days of the week, hours, etc.; and

(iv) Proposed source(s) of utilities such as electrical power;

(e) Applicants must immediately clear the public right-of-way when ordered to do so by city authorities for reasons of public health or safety; and

(f) In reviewing a proposed use within the public right-of-way, the city manager or designee may include conditions as may be reasonably needed to ensure that the use is consistent with the purpose of the D-C zone, and to minimize the likelihood of adverse impacts. The city manager or designee shall deny the request if it is determined that adverse impacts cannot be mitigated satisfactorily.

(8) Landscaping. All uses shall conform to the landscaping and screening provisions set forth by chapter 18.41 DMMC.

(9) Outdoor Uses. Outdoor activities such as sales, display, storage, dining, etc., shall not obstruct vehicular or pedestrian visibility or movement. [Ord. 1514 § 6, 2011: Ord. 1486 § 4, 2010: Ord. 1439 § 2, 2008; Ord. 1427 § 1, 2008; Ord. 1237 § 3, 1999; Ord. 1104 § 5, 1994.]

18.27.060 General building design requirements.

Development within the D-C zone shall conform to the following building design requirements:

(1) Structural encroachments into the right-of-way, such as cornices, signs, eaves, sills, awnings, bay windows, balconies, facade treatment, marquees, etc. shall conform to the provisions set forth by Titles 12 and 14 DMMC, and the following provisions:

(a) Structural encroachments into the right-of-way shall be capable of being removed without impact upon the structural integrity of the primary building;

(b) Structural encroachments into the right-of-way shall not result in additional building floor area than would otherwise be allowed;

(c) Except for awnings, signs, and marquees, the maximum horizontal encroachment into the right-of-way shall be two feet;

(d) The maximum horizontal encroachment in the right-of-way by signs shall be four feet;

(e) The maximum horizontal encroachment in the right-of-way by awnings and marquees shall be six feet;

(f) The minimum horizontal distance between the structural encroachment and the curbline shall be two feet;

(g) Except for awnings over the public sidewalk which may be continuous, the maximum length of each balcony, bay window, or similar feature that encroaches the right-of-way shall be 12 feet;

(h) The applicant shall demonstrate proof of public liability insurance and consent to a public place indemnity agreement;

(i) Owners of structural encroachments into the right-of-way must clear the public right-of-way when ordered to do so by city authorities for reasons of public health or safety; and

(j) In reviewing a proposed structural encroachment into the public right-of-way, the city manager or designee may include conditions as may be reasonably needed to ensure that the structure is consistent with the purpose of the D-C zone, and to minimize the likelihood of adverse impacts. The city manager or designee shall deny the request if it is determined that adverse impacts cannot be mitigated satisfactorily.

(2) Pedestrian entrances at street level shall conform to all applicable provisions of chapter 51-10 WAC, Barrier-free facilities, as presently constituted or as may be subsequently amended.

(3) Maximum Gross Floor Area.

(a) Area 1 and Area 4, Figure 1. The maximum gross floor area allowed on a site is determined by multiplying the lot area of the site by 2.5.

(b) Area 2, Figure 1. The maximum gross floor area allowed on a site is determined by multiplying the lot area of the site by 3.2.

(c) Area 3, Figure 1. The maximum gross floor area allowed on a site is determined by multiplying the lot area of the site by 3.5.

(d) Using the public benefit incentive system in subsection (4) of this section, the maximum gross floor area allowed on a site in Area 1, Figure 2, is determined by multiplying the lot area of the site by 3.5.

(e) For the purposes of this section, gross floor area does not include any underground areas designed and used for parking.

(f) For the purpose of this section, when more than one building is located on a single property the sum of all gross floor areas of all the buildings shall not exceed the total gross floor area allowed for the property.

(4) Public Benefit Incentive System. The city manager or designee may approve additional building square footage based on the ratios in Table 18.27.060 subject to the following:

(a) The gross floor area and/or building height limits cannot exceed the limits allowed in subsection (3) of this section and DMMC 18.27.040(2), as provided in Table 18.27.060 and the requirements of this section.

(b) The city manager or designee may approve a public benefit feature not listed in Table 18.27.060 if a public benefit is located within the marina district, a public benefit will be derived from the proposed feature that is roughly equivalent to the benefit derived from a feature in Table 18.27.060.

Table 18.27.060 Public Benefit Incentive System Ratios

PUBLIC BENEFIT FEATURE	BONUS FLOOR AREA PER UNIT OF PUBLIC BENEFIT FEATURE
1. Streetscape	
Each $1,000 spent on additional roadway improvements above what is required by chapter 12.28 DMMC	100 square feet
2. Design Elements	
1 sq.ft. of underground parking	5 square feet
1 sq.ft. of below-ground public parking structure	2.5 square feet
1 sq.ft. of shared parking (for other sites)	0.5 square feet
1 sq.ft. of rooftop garden	2 square feet
1 sq. ft. of rooftop beautification	2 square feet
3. Civic Contributions	
1 sq.ft. of public parking area	0.5 square feet
1 sq.ft. of public meeting/conference facilities	1 square foot
Each $1,000 spent on public art or water features	100 square feet
Each $1,000 spent to improve connections to the Des Moines Marina to include signage, way finding, and improved pedestrian connections	100 square feet
Each $1,000 spent to improve Covenant Beach Park National Historic District	100 square feet
4. Uses	
1 sq.ft. restaurant (not fast-food or take-out)	1 square foot
1 sq.ft. rooftop or top floor restaurant (not fast-food or take-out)	4 square feet
1 sq.ft. of day-care facilities	6 square feet
1 sq.ft. of public restroom	4 square feet
1 sq.ft. of public open space	4 square feet
1 sq.ft. of retail use on ground floor	2 square feet
1 sq.ft. of theater or performing arts venue	5 square feet

1. Areas devoted to service cores and community facilities may be used to obtain bonus floor area. No area devoted to parking or circulation may be used for this purpose.

[Ord. 1514 § 7, 2011: Ord. 1486 § 5, 2010: Ord. 1237 § 3, 1999; Ord. 1104 § 6, 1994.]

18.27.070 Appeal from administrative decisions.

Repealed by Ord. 1514. [Ord. 1104 § 10, 1994.]

Chapter 18.28

C-G GENERAL COMMERCIAL ZONE

Sections

18.28.010 Purpose of zone.

The purpose of this zone and its application is to provide for the location of and grouping of enterprises which may involve some on-premises retail service but with outside activities and display or fabrication, assembling, and service features, including manufacturing and processing in limited degree and which uses, if permitted to locate in strictly on-premises retail and service areas, would introduce factors of heavy trucking and handling of materials that destroy the maximum service and attraction of strictly retail areas. The uses enumerated in this zone are considered as having common or similar performance standards in that:

(1) They are heavier in type than those uses permitted in the strictly commercial zones and yet are measurably lighter uses than those first permitted in the business park zones;

(2) They do not attract nor depend upon individual and personal patron contact on the premises to the same degree as do uses in strictly retail and service areas but, rather, represent in part enterprises whose services are either performed away from the premises and throughout the metropolitan area or enterprises in which the manufacturing, assembling, processing, or treating of products is not accessory or limited to products sold on the premises only as is required in retail and service areas;

(3) They can more advantageously use the standard lot and street pattern than can strictly industrial uses;

(4) They involve a greater handling of materials and commodities and more trucking than uses permitted in a strictly retail area, but do not require large sites nor involve as much handling of materials and commodities or heavy trucking as uses first permitted in strictly industrial areas;

(5) They are not as detrimentally affected by dispersal or separation from adjoining uses as are enterprises which are retail in nature and which need to be located in compact areas for convenient patron access;

(6) They do not normally involve as intensive use of land as uses comprising retail shopping areas;

(7) They frequently involve activities carried on outside of buildings;

(8) By reason of technological processes, equipment, materials used, outside activities or size or volume of products, a given type of enterprise may, under various names, represent extremes that necessitate different zone. For this reason a clearer identification of uses permitted in this zone is accomplished by naming typical uses to further indicate the type and grouping of uses allowed, as well as by establishing performance standards. [Ord. 1237 §§ 3, 4, 1999; Ord. 1170 § 7, 1996; Ord. 175 § 1(24.30.010), 1964.]

18.28.020 Permitted uses.

The following uses only are permitted, and as specifically provided and allowed by this chapter:

(1) Any use permitted in the N-C and B-C zones, except:

(a) Churches;

(b) Private clubs, fraternal societies, fraternities, sororities, and lodges, except those the chief activity of which is a service customarily carried on as a business; however, any use permitted to locate in a B-C zone which is subject to restrictions as to location with reference to schools, parks, and playgrounds, and any use requiring a conditional use permit shall be subject to the same restrictions and limitations in this zone;

(2) Assembly of appliances, such as:

(a) Electronic instruments and devices;

(b) Radios, phonographs, and televisions, including manufacture of small parts, such as coils;

(3) Ambulance service;

(4) Auction houses or stores, but excluding vehicles and livestock;

(5) Automobile laundries;

(6) Automobile sales, new and used;

(7) Automobile trailer sales, new and used;

(8) Blueprinting and photostating;

(9) Boat building for craft not exceeding 48 feet in length;

(10) Boat sales, new and used;

(11) Boat repairs;

(12) Bookbinding;

(13) Building materials stores and yards, retail only; provided, any required wall on a property line common with residential property shall be not less than eight feet in height;

(14) Cabinet shop or carpenter shop;

(15) Ceramic products, manufacture of, including figurines (but not including bricks, drain, building, or conduit tile), using only previously pulverized clay and batch kilns as distinguished from shuttle, tunnel, or beehive kilns, and such batch kilns shall not exceed a total capacity of 130 cubic feet;

(16) Distribution centers for home deliveries (storage and loading of retail delivery trucks from underground fuel storage);

(17) Electric or neon sign manufacturing, servicing, and repairing;

(18) Fix-it shops;

(19) Frozen food or cold storage lockers;

(20) Furniture repair;

(21) Garages, public (including repairing and storage when in an entirely enclosed building);

(22) Glass edging, beveling, and silvering in connection with the sales of mirrors and glass-decorated furniture;

(23) Glass studios – stained, etc.;

(24) Kennels, commercial, provided all run areas shall be completely surrounded by an eight-foot solid wall or fence;

(25) Laboratories;

(26) Machine shop, no automatic screw machines, or punch press over five tons;

(27) Moorage, commercial boat, including repairing;

(28) Paint shop (painting contractor);

(29) Parcel service delivery;

(30) Printing establishments;

(31) Plumbing shops;

(32) Saw and filing shops;

(33) Storage and handling of household goods;

(34) Tire rebuilding, recapping, and retreading;

(35) Upholstery, custom work;

(36) Wholesale business and accessory storage;

(37) Accessory buildings and uses customarily incident to any of the above uses when located on the same site with the main building;

(38) Other similar commercial and industrial enterprises or businesses after classification as set forth in DMMC 18.36.050;

(39) Planned unit development as provided in chapter 18.52 DMMC;

(40) Mixed uses, subject to an unclassified use permit;

(41) Automobile service stations. [Ord. 1237 §§ 2, 3, 4, 1999; Ord. 1170 § 7, 1996; Ord. 617 §§ 4, 7, 1985; Ord. 584 § 7, 1983; Ord. 248 § 6, 1969; Ord. 193 §§ 7, 8, 1965; Ord. 175 § 1(24.30.020), 1964.]

18.28.030 Limitations on permitted uses.

Every use permitted shall be subject to the following conditions and limitations:

(1) All uses shall conform to the general provisions and exceptions and the off-street parking requirements and loading area requirements set forth in this title beginning with chapter 18.36 DMMC;

(2) In the case of automobile service stations, the leading edge of the pump islands shall not be closer than 15 feet to any street property line;

(3) If a building site has a boundary line which is a common property line with residential property, then on such common line a wall or view-obscuring fence or hedge not less than five feet in height shall be installed and main-

tained for screening purposes and controlling access. Where the wall of a building is on a common line, no separate wall or fence need be installed along that portion occupied by the building;

(4) Adult entertainment facilities shall not be permitted in the C-G zone;

(5) Adult motion picture theaters shall not be permitted in the C-G zone. [Ord. 1237 § 4, 1999; Ord. 1170 § 7, 1996; Ord. 834 § 1, 1989; Ord. 617 § 4, 1985; Ord. 193 § 9, 1965; Ord. 175 § 1(24.30.030), 1964.]

18.28.035 Hazardous waste and hazardous substances.

Any use permitted by this chapter which involves the treatment or storage of hazardous waste or the use or handling of hazardous substances shall conform to the regulations contained in this section. In the event there is a conflict between the provisions of this section and any other provision of this chapter, the provisions of this section shall prevail.

(1) Off-site hazardous waste facilities are prohibited.

(2) On-site hazardous waste facilities are permitted as an accessory use only; provided, that the location of such facilities shall be consistent with siting criteria adopted or hereafter amended by the Department of Ecology under RCW 70.105.210 incorporated in this chapter by reference and that the transport, storage, containment, treatment, or disposal of such hazardous wastes shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

(3) The use or handling of hazardous substances are permitted as an accessory use only; provided, that the transport, storage, containment, application, and disposal of such hazardous substances shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

(4) Violation – Civil Penalty, Revocation of Business License. Failure to comply with any of the requirements of this section shall result in enforcement by civil penalty as set forth in DMMC 18.72.060 and revocation of business license as set forth in DMMC 5.04.060.

(5) Violation – Abatement Authorized. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 1170 § 7, 1996; Ord. 757 § 5, 1988.]

18.28.040 Permissible floor area.

The maximum permitted floor area to be contained in all buildings on a lot in a C-G zone shall not exceed three and one-half times the square foot area of the lot. [Ord. 1170 § 7, 1996; Ord. 175 § 1(24.30.040), 1964.]

18.28.050 Height.

In a C-G zone no building or structure shall exceed a height of 35 feet. [Ord. 1170 § 7, 1996; Ord. 175 §§ 1(24.30.050), 24, 1964.]

18.28.060 Required open spaces.

Additional open spaces, both as to amount and location on the premises may be required in connection with an unclassified use permit, variance, or planned unit development to apply the established requirements of this and other related codes pertaining to such subjects as off-street parking, loading areas, convenient and safe circulation of vehicles and pedestrians, ingress and egress as related to the marginal traffic pattern, vision clearance (traffic), drainage, and lighting. [Ord. 1170 § 7, 1996; Ord. 175 § 1(24.30.060), 1964.]

18.28.070 Placement of buildings and structures.

Placement of buildings and structures including additions to existing buildings or structures, excluding signs, shall maintain minimum setbacks established by the department of community development based on the following criteria:

(1) When the front or side lot line abuts the public right-of-way, the building or structure shall abut the public right-of-way unless:

(a) Subsection (2) of this section requires that the building or structure be set back; or

(b) Through the permitting process, the community development director finds it is in the public interest to allow the proposed building or structure to be set back from the right-of-way. In considering a request for setback, the director shall consider matters such as adopted land use policies, vehicular and pedestrian circulation, landscaping, existing site improvements, adjacent site improvements, and public benefit features such as plazas and public artwork. Decisions of the director regarding setbacks are appealable to the hearing examiner pursuant to chapter 18.94 DMMC.

(2) Where any lot line lies adjacent to a public right-of-way or private street and residentially zoned property lies adjacent to such public right-of-way or private street, or when the lot line abuts a residentially zoned property, a minimum building or structure setback of 10 feet shall be maintained. [Ord. 1170 § 7, 1996; Ord. 1063 § 3, 1993; Ord. 705 § 1, 1987; Ord. 248 § 7, 1969.]

18.28.080 Internal walkways.

In order to encourage safe pedestrian circulation through the siting of buildings, walkways shall be constructed on each property being newly developed or materially remodeled, enlarged, or repaired to the extent of 50 percent of the value of the existing structure(s) as hereinafter provided. In the case of a series of additions, alterations, or repair projects, this section shall become effective at the point where in any three-year period the cumulative value of additions, alterations, or repairs exceeds 50 percent of the value of the structure(s) at the time such additions, alterations, or repairs are commenced.

(1) Walkways Around Buildings. Pedestrian walkways shall be provided at or around the building(s) of sufficient extent to provide safe pedestrian passage; provided, however, where no side or rear yard exists, no walkway will be required along those portions of the building abutting the lot line. A minimum six-foot walkway shall be required adjacent to the principal entrance to the building(s).

(2) Street Sidewalk Connections. A minimum six-foot pedestrian walkway shall be provided which connects walkways at the building to street sidewalks. Where no street sidewalk exists, the connecting walk shall extend to the street right-of-way.

(3) Connection to Adjoining Properties. Walkways shall be provided which connect to adjoining properties in locations on, or as near as possible to, desired lines of pedestrian traffic in accordance with the comprehensive walkway plan. A minimum six-foot walkway shall be required between adjacent building fronts. Alternate routes or branch connections to perimeter or other walkways shall be a minimum of five feet in width.

(4) Coordination with Circulation System. All such required pedestrian walks shall be located and constructed as an integral part of the total coordinated pedestrian circulation system.

(5) Design Standards.

(a) Surface. Walkways shall be paved with hard-surfaced material such as concrete, stone, brick, tile, etc. Walkways shall be clearly defined and differentiated from parking and vehicle circulation areas by use of contrasting paving, such as white concrete in an asphalt area, visually obvious paint stripes, or other clearly defined pattern. Where paint is used, the property owner shall be responsible for maintaining the paint to achieve the intent of this section.

(b) Stairs. Where stairs are employed, the riser to thread proportion shall be designed to normal stair standards or be clearly monumental in proportion. Handrails shall be provided where the number of risers or adjoining grade difference requires the protection afforded by rails, as determined by the public works director. (See Section 3305 of the Uniform Building Code). Any flight of stairs within 15 feet of any other flight of stairs, if it is on a pedestrian route, shall have the same riser and thread dimensions.

(c) Lighting. Night lighting shall be provided where stairs, curbs, ramps, or abrupt changes in walkway direction occur. Light fix-

tures shall not exceed a height of 14 feet. Provision of special accent or feature lighting is encouraged.

(d) Covering. Walks should be covered by marquees or other roof structures where possible and practical. Roofed and walled passageways between or through buildings shall be ample in width, as determined by the community development director (width as proportioned to length) and night lighted. [Ord. 1170 § 7, 1996; Ord. 705 § 2, 1987.]

Chapter 18.29

H-C HIGHWAY COMMERCIAL ZONE

Sections

18.29.010 Purpose of zone.

The intent of this zone is to provide for the location and grouping of diversified commercial/retail activities which serve a broader, regional clientele, involving some on-premises retail service but requiring more convenience for vehicular circulation. These uses depend on proximity to major highways or arterials for trade or transportation, are characterized by less dependence on individual and personal patron contact than uses in retail zones, and involve outside activities and display or fabrication, assembling, and service features. Uses enumerated in this zone have common or similar performance standards in that they are heavier in type than those uses permitted in the more restrictive commercial zones and often are not compatible with uses permitted in other commercial zones because of the type of commodities and goods handled, greater handling of materials and commodities, increased trucking activity, need for larger sites, and noise, traffic, or other impacts generated. Uses are measurably lighter uses than typical of business park zones; however, they do not normally involve as intensive use of land as those comprising the retail shopping area. [Ord. 1237 §§ 3, 4, 1999; Ord. 667 § 1(A), 1986.]

18.29.020 Permitted uses.

The following uses only are permitted, and as specifically provided and allowed by this chapter:

(1) Accessory uses and buildings customarily appurtenant to a permitted use, such as incidental storage;

(2) *Reserved for future use*;

(3) Auction houses, excluding automobiles and animals;

(4) Automobile parking;

(5) Automobile sales, new and used;

(6) Automobile trailer sales and rental;

(7) Bakeries, manufacturing and retail sales;

(8) Boat building for craft not exceeding 48 feet in length;

(9) Boat sales, new and used;

(10) Boat repairs;

(11) Bookbinding;

(12) Building materials stores and yards, retail only; provided, any required wall on a property line common with residential property shall be not less than eight feet in height;

(13) Business or commercial schools;

(14) Cabinet or carpenter shops;

(15) Car washes;

(16) Ceramic products, manufacture of, including figurines (but not including bricks, drain, building, or conduit tile), using only previously pulverized clay and batch kilns as distinguished from shuttle, tunnel, or beehive kilns, and such batch kilns shall not exceed a total capacity of 130 cubic feet;

(17) Cocktail lounges, when located with a restaurant;

(18) Confectionery and related products, manufacturing;

(19) Convention facilities;

(20) Data processing businesses and record storage facilities;

(21) Distribution centers for home deliveries (storage and loading of retail delivery trucks from underground fuel storage);

(22) Electrical appliances and supplies, retail sales, wholesale trade and repairs;

(23) Equipment rental and leasing;

(24) Fix-it shops;

(25) Food locker services;

(26) Furniture, home furnishings, and equipment sales;

(27) Garages, public (including repairing when in an entirely enclosed building);

(28) General contracting businesses;

(29) Glass edging, beveling, and silvering in connection with the sales of mirrors and glass-decorated furniture;

(30) Glass studios, stained, etc.;

(31) Horticultural nurseries and garden supplies;

(32) Hospitals;

(33) Hotels and motels, not including apartment hotels;

(34) Job printing, newspapers, lithographing, and publishing;

(35) Laboratories, medical, dental, and photographic;

(36) Machine shop, no automatic screw machines, or punch press over five tons;

(37) Moorages for private pleasure craft;

(38) Mortuaries;

(39) Motor vehicle repair operations;

(40) Offices, business and professional;

(41) Parcel service delivery;

(42) Pawnshops;

(43) Pet shops, if entirely within a building;

(44) Public utility installations relating directly to the distribution of services;

(45) Recreation facilities, commercial, such as swimming pools, bowling alleys, skating rinks, and miniature golf;

(46) Recreation vehicle sales and storage;

(47) Restaurants;

(48) Retail sales;

(49) Reupholstery and furniture repair;

(50) Saw and filing shops;

(51) Sign manufacturing;

(52) Signs, subject to chapter 18.42 DMMC;

(53) Taverns;

(54) Telephone exchanges;

(55) Theaters; provided, that adult motion picture theaters are prohibited within 500 feet of the property lines of churches, schools, preschool through high school, public facilities, adult entertainment facilities, or other adult motion picture theaters;

(56) Upholstery, custom work, including furniture repair;

(57) Wholesale businesses;

(58) Other similar commercial enterprises after classification as set forth in DMMC 18.36.050;

(59) Unclassified uses as provided in DMMC 18.32.020. [Ord. 1288 § 2, 2001; Ord. 1237 § 4, 1999; Ord. 667 § 1(B), 1986.]

18.29.030 Conditional uses.

Conditional uses in the H-C zone include:

(1) Laboratories, other than medical, dental, or photographic;

(2) Conditional uses as set forth in DMMC 18.32.030. [Ord. 667 § 1(C), 1986.]

18.29.040 Limitations on uses.

Every use locating in the H-C zone shall be subject to the following conditions and limitations:

(1) Automobile Service Stations. Buildings, structures, and the leading edge of pump islands shall not be closer than 20 feet to any street property line, except that service station canopies and marquees may project 10 feet into the required setback.

(2) If a building site has a boundary line which is a common property line with residential property, then on such common line a wall or view-obscuring fence or hedge not less than five feet in height shall be installed and maintained for screening purposes and controlling access. [Ord. 1237 § 4, 1999; Ord. 667 § 1(D), 1986.]

18.29.045 Hazardous waste and hazardous substances.

Any use permitted by this chapter which involves the treatment or storage of hazardous waste or the use or handling of hazardous substances shall conform to the regulations contained in this section. In the event there is a conflict between the provisions of this section and any other provision of this chapter, the provisions of this section shall prevail.

(1) Off-site hazardous waste facilities are prohibited.

(2) On-site hazardous waste facilities are permitted as an accessory use only; provided, that the location of such facilities shall be consistent with siting criteria adopted or hereafter amended by the Department of Ecology under RCW 70.105.210 incorporated in this chapter by reference and that the transport, storage, containment, treatment, or disposal of such hazardous wastes shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

(3) The use or handling of hazardous substances are permitted as an accessory use only; provided, that the transport, storage, containment, application, and disposal of such hazardous substances shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

(4) Violation – Civil Penalty, Revocation of Business License. Failure to comply with any of the requirements of this section shall result in enforcement by civil penalty as set forth in DMMC 18.72.060 and revocation of business license as set forth in DMMC 5.04.060.

(5) Violation – Abatement Authorized. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 757 § 6, 1988.]

18.29.050 Permissible floor area.

The maximum permitted floor area to be contained in all buildings on a lot in an H-C zone shall not exceed three and one-half times the square foot area of the lot. [Ord. 667 § 1(E), 1986.]

18.29.060 Height.

In an H-C zone no building or structure shall exceed a height of 35 feet. [Ord. 667 § 1(F), 1986.]

18.29.070 Placement of buildings and structures.

Placement of buildings and structures on any lot in the H-C zone shall conform to the following:

(1) Front Setback. Any building or structure, except signs or service station canopies or marquees, shall maintain a 60-foot minimum setback.

(2) Rear Setback. A minimum 10-foot rear setback shall be maintained from any residential property.

(3) Side Setback. A minimum 10-foot side setback shall be maintained from any residential property. [Ord. 1237 § 4, 1999; Ord. 667 § 1(G), 1986.]

18.29.080 Landscaping requirements.

Landscaping in the H-C zones shall be required as set forth in chapter 18.41 DMMC. [Ord. 667 § 1(H), 1986.]

18.29.090 Parking and loading requirements.

In H-C zones, off-street parking and loading areas shall be provided as set forth in chapter 18.44 DMMC. [Ord. 667 § 1(I), 1986.]

18.29.100 Required right-of-way improvements.

In the H-C zone, all new construction, additions, or alterations which exceed 50 percent of the value of the existing structure or, in the case of a series of addition or alteration projects, when in a five-year period the cumulative value of additions or alterations exceeds 50 percent of the value of the structure at the time such additions or alterations are commenced, shall include construction of curb, gutters, and sidewalks in accordance with Washington State Department of Transportation standards. [Ord. 667 § 1(J), 1986.]

Chapter 18.30

R-SR RESIDENTIAL: SUBURBAN RESIDENTIAL ZONE

Sections

18.30.010 Purpose of zone.

The principal objective and purpose to be served by this zone and its application is to provide for the orderly transition of areas presently largely suburban in character but which are rapidly becoming urbanized. This zone is intended to apply to areas in a transitional stage, and which are changing, or are expected to change in character, in the light of increasing need for urban development. [Ord. 1237 § 3, 1999; Ord. 1170 § 7, 1996; Ord. 593 § 1, 1984.]

18.30.020 Permitted uses.

In an R-SR zone the following residential uses only are permitted and as hereinafter specifically provided and allowed by this chapter, subject to the off-street parking requirements, landscaping requirements, and the general provisions and exceptions set forth in this title beginning with chapter 18.33 DMMC:

(1) Any use permitted in the single-family residential and R-SE zones; provided, however, that on lots having an area of less than 35,000 square feet, only those uses permitted in the single-family residential zone are allowed, and on those lots having more than 35,000 square feet only those uses permitted in the R-SE zone are allowed. One-family dwellings shall be subject to the limitations of use section of the single-family residential zone;

(2) Signs, as provided in this title;

(3) Planned unit developments as provided in chapter 18.52 DMMC;

(4) Unclassified uses as provided in chapter 18.32 DMMC. [Ord. 1237 §§ 2, 3, 4, 1999; Ord. 1170 § 7, 1996; Ord. 593 § 2, 1984.]

18.30.030 Lot area.

The minimum required area of a lot in an R-SR zone shall be 35,000 square feet; provided, however, in multiple lot subdivisions approved subsequent to the effective date of this title:

(1) The minimum required area may be reduced to 7,200 square feet when:

(a) All lots are served by public sewers;

(b) All lots are served by public water; and

(c) All lots are served by paved streets with curbs, sidewalks, and underground storm drainage.

(2) The minimum required lot area may be reduced to 15,000 square feet when:

(a) All lots are served by public or private water;

(b) All lots are served by an approved sewage disposal system; and

(c) All lots are served by paved streets and walkways.

(3) The provisions, methods, and standards contained in the single-family residential zones under chapter 18.08 DMMC pertaining to meeting minimum lot area requirements by using the average lot size of the subdivision shall also apply to comparable subdivisions permitted under this section. [Ord. 1237 §§ 2, 3, 4, 1999; Ord. 1170 § 7, 1996; Ord. 593 § 3, 1984.]

18.30.040 Lot area per dwelling unit.

In an R-SR zone the lot area per dwelling unit shall be not less than 35,000 square feet unless a subdivision containing lots having less area has been approved, in which case the lot area per dwelling unit shall be the area of the lot within the approved subdivision. [Ord. 1237 § 2, 1999; Ord. 1170 § 7, 1996; Ord. 593 § 4, 1984.]

18.30.050 Lot width.

In an R-SR zone every lot shall have a width of not less than 135 feet; except that when the lot is a part of approved subdivision and has an area less than 9,600 square feet, such lot shall have a width not less than 60 feet. Lots having an area of 9,600 square feet but less than 35,000 square feet shall have a width not less than 75 feet. [Ord. 1237 § 2, 1999; Ord. 1170 § 7, 1996; Ord. 593 § 5, 1984.]

18.30.060 Front yard.

In an R-SR zone every lot shall have a front yard having a depth of not less than 30 feet, unless such lot is a part of an approved subdivision as provided in DMMC 18.30.030 in which case a lot having an area less than 35,000 square feet may have a front yard not less than 20 feet in depth. [Ord. 1237 § 2, 1999; Ord. 1170 § 7, 1996; Ord. 593 § 6, 1984.]

18.30.070 Height.

In an R-SR zone no building or structure shall exceed a height of 25 feet. [Ord. 1237 § 2, 1999; Ord. 1170 § 7, 1996; Ord. 593 § 7, 1984.]

18.30.080 Permissible lot coverage.

In an R-SR zone all buildings and structures, including accessory buildings and structures, but not including any open areas used to provide parking spaces or private swimming pools, shall not cover more than 35 percent of the area of the lot. In the case of churches and schools the limitation of lot coverage shall pertain to buildings and structures only, and does not include open air parking areas. [Ord. 1237 § 2, 1999; Ord. 1170 § 7, 1996; Ord. 593 § 8, 1984.]

18.30.090 Placement of buildings and structures.

Placement of buildings and structures on any lot in R-SR zone shall conform to the following:

(1) Lots containing an area less than 15,000 square feet, when such lots are a part of an approved subdivision, shall maintain side

yards, rear yard, open space, and distance between buildings as set forth in the RS-7,200 zone;

(2) Lots containing an area of 15,000 square feet, but less than 35,000 square feet, when such lots are a part of a recorded subdivision plat, shall maintain the side yards, rear yard, open spaces, and distance between buildings as set forth in the RS-15,000 zone;

(3) On lots containing an area of 35,000 square feet or more, any building or structure, whether it is the main building or structure, or whether it is an accessory building or structure, shall maintain the side yards, rear yard, open spaces, and distance between buildings as set forth in the R-SE zone. Where a greater distance is required as a condition to the establishment of a permitted building or use, such greater distance shall prevail. [Ord. 1237 §§ 2, 3, 1999; Ord. 1170 § 7, 1996; Ord. 593 § 9, 1984.]

Chapter 18.31

PACIFIC RIDGE ZONE

Sections

18.31.010 Purpose.

The principal objective and purpose of this zone and its application is to implement the City of Des Moines Comprehensive Plan, Pacific Ridge Neighborhood Improvement Plan, and other adopted policies for the commercial and residential areas of Pacific Ridge.

Furthermore, it is the objective and purpose of this zone to provide development regulations that will promote redevelopment of Pacific Ridge properties in order to create attractive, safe, and desirable areas to work and reside. Redevelopment of Pacific Ridge is appropriate because this area has excellent access to transportation facilities, view opportunities, and higher-density development which can help Des Moines meet or exceed population and employment growth targets specified by the countywide planning policies for King County. Also, redevelopment of Pacific Ridge properties is appropriate because many of the existing structures and land uses have resulted in social problems such as: high crime rates (especially major felony crimes); declining property values; unsafe and undesirable housing conditions; insufficient building and property maintenance; absentee property ownership/management; violation of zoning,

construction, and health codes; transient residency; and marginal businesses.

A related consideration is to make it possible to efficiently and economically plan for, design, finance, and provide public services, capital facilities, and utilities for the populations and activities within this zone. For all of the above reasons, the purpose of this chapter is to promote public health, safety, and welfare through redevelopment of Pacific Ridge properties. [Ord. 1267 § 2(part), 2000.]

18.31.020 Subareas within Pacific Ridge zone.

(1) Except as provided below, properties within the Pacific Ridge zone are located within one of three subareas as illustrated by the zoning map designated by DMMC 18.80.010. The three subareas, hereafter referred to as zones, have unique land use and development regulations, and some general regulations apply to each zone. The three Pacific Ridge zones are as follows:

(a) PR-R, Pacific Ridge Residential.

(b) PR-C1, Pacific Ridge Commercial 1.

(c) PR-C2, Pacific Ridge Commercial 2.

(2) Other zones may be applied to existing and planned public facilities, parks, utilities, and similar land uses.

(3) For application of the general provisions of this title, PR-R is a multifamily residential zone while PR-C1 and PR-C2 are commercial zones. [Ord. 1267 § 2(part), 2000.]

18.31.030 PR-R – Permitted uses.

Only those uses listed below, and uses similar in nature as determined by the planning, building and public works director, are permitted in the PR-R zone. Uses are more fully described in the "North American Industrial Classification System." Listed uses may be otherwise conditioned in this code. The numbers in parentheses following each of the following listed uses refer to North American Industrial Classification System (NAICS) code numbers:

(1) Multifamily dwellings (no NAICS code);

(2) Religious organizations (813110);

(3) Nursing care facilities (623110) and community care facilities for the elderly (6233);

(4) Public utility facilities and appurtenances necessary for the distribution of utility services to final customers within the immediate area;

(5) Mixed use (no NAICS code), subject to the limitations below and the limitations provided in DMMC 18.31.090, Environmental performance standards and general limitations:

(a) Total nonresidential floor area shall not exceed 15 percent of the total floor area of the individual building and a minimum of 25 percent of commercial space must be located along the ground floor;

(b) Permitted nonresidential uses shall be limited to the following:

(i) Retail trade (44-45), limited to the following:

(A) Food and beverage stores (445);

(B) Health and personal care stores (446);

(ii) Real estate and rental and leasing (53), limited to the following:

(A) Offices of real estate agents and brokers (5312);

(B) Real estate property managers (53131);

(C) Offices of real estate appraisers (53132);

(D) Other activities related to real estate (53139); and

(E) Video tape and disc rental (53223);

(iii) Health care and social assistance (62), limited to the following:

(A) Ambulatory health care services (621) except blood and organ banks (621991); and

(B) Child care facilities (6244);

(iv) Food services and drinking places (722), limited to the following:

(A) Full service restaurants (7221); and

(B) Limited-service eating places (7222);

(v) Other services (81), limited to the following:

(A) Footwear and leather goods repair (811430);

(B) Personal care services (8121);

(C) Dry-cleaning and laundry services (8123); and

(D) Photofinishing (81292);

(vi) Public administration (92), limited to police protection (92212);

(6) Botanical gardens (712130);

(7) Public parks (no NAICS code);

(8) The following buildings, structures and uses are allowed when accessory to a use otherwise permitted by this chapter:

(a) Ancillary and incidental indoor storage and maintenance facilities related to on-site buildings and uses;

(b) Telecommunication facilities as allowed by Title 20 DMMC;

(c) Recreation facilities for use by residents of the property;

(d) Child and adult day care as regulated and licensed by the Washington State Department of Social and Health Services, or its successor agency;

(e) Home occupation, subject to the following limitations:

(i) The occupation shall be conducted entirely within the dwelling;

(ii) The occupation shall not require structural features that are not customary or incidental in a dwelling;

(iii) No signs identifying or advertising the home occupation, or other exterior evidence of the home occupation is allowed;

(iv) A business license as provided by Title 5 DMMC is granted by the city for the home occupation;

(v) In authorizing a home occupation, the city manager may impose conditions of approval as necessary to ensure the activity is compatible with the surrounding uses;

(vi) In the event the city manager determines that the home occupation has resulted in adverse land use impacts, the city manager is authorized to impose additional conditions of approval as necessary; and

(viii) In the event the nature or extent of the home occupation changes so that the adverse land use impacts cannot be satisfactorily mitigated, the city manager may revoke all approvals and licenses related to the home occupation. [Ord. 1406 § 1, 2007: Ord. 1267 § 2(part), 2000.]

18.31.040 PR-C1 – Permitted uses.

Only those uses listed below, and uses similar in nature as determined by the community development director, are permitted in the PR-C1 zone. Uses are more fully described in the "North American Industrial Classification System." Listed uses may be otherwise conditioned in this code. The numbers in parentheses following each of the following listed uses refer to North American Industrial Classification System (NAICS) code numbers:

(1) Retail trade (44-45), except the following:

(a) Automobile dealers (4411);

(b) Other motor vehicle dealers (4412);

(c) Tire dealers (44132);

(d) Manufactured (mobile) home dealers (45393);

(e) Heating oil dealers (454311); and

(f) Other fuel dealers (454319);

(2) A maximum of one gasoline station (447) is permitted within the PR-C1 zone. Buildings containing only a gasoline station are not subject to the minimum building height provisions contained in this chapter;

(3) Limousine service (485320) when primarily contained within an enclosed structure;

(4) Postal service (491);

(5) Couriers and messengers (492);

(6) Information establishments (51), except telecommunication (5133), which is regulated by Title 20 DMMC;

(7) Finance and insurance (52);

(8) Real estate and rental and leasing (53), except the following:

(a) Lessors of miniwarehouses and self-storage units (53113);

(b) Automotive equipment rental and leasing (5321); and

(c) Commercial and industrial machinery and equipment rental and leasing (5324);

(9) Professional, scientific, and technical services (54), except off-premises signs (billboards) which are regulated by chapter 18.42 DMMC;

(10) Management of companies and enterprises (55);

(11) Administrative and support services (56), except the following:

(a) Repossession services (561491);

(b) Services to buildings and dwellings (5617); and

(c) Waste management and remediation services (562);

(12) Educational services (61);

(13) Health care and social assistance (62), subject to the following limitations:

(a) The following uses are prohibited:

(i) Outpatient mental health and substance abuse centers (62142);

(ii) Hospitals (622);

(iii) Residential mental retardation, mental health, and substance abuse facilities (6232);

(b) Permitted nursing and residential care facilities (623) and community care facilities for the elderly (6233) are allowed only within the residential portion of a mixed-use building;

(14) Arts, entertainment, and recreation (71) subject to the following limitations:

(a) The following uses are prohibited:

(i) Spectator sports (7112);

(ii) Amusement, gambling, and recreation industries;

(b) Adult entertainment facilities and adult motion picture theaters (no NAICS code) are prohibited within 500 feet of the property lines of churches, common schools, day care centers, public facilities, or other adult entertainment facilities or adult motion picture theaters;

(15) Accommodation and food services (72), limited to the following:

(a) Hotels (72111), subject to the following:

(i) Casino hotels and motels are prohibited; and

(ii) Hotels and resort hotels are further allowed as follows:

(A) Hotels and resort hotels shall contain a minimum of 125 guest rooms; and

(B) Hotels and resort hotels shall contain meeting room facilities; and

(C) A maximum of six hotel and/or resort hotel developments shall be allowed within the PR-C1 zone; and

(D) A maximum of 1,500 guestrooms shall be allowed within the PR-C1 zone;

(b) Food services and drinking places (722), subject to the following provisions:

(i) Fast food restaurants (722211) are allowed only in conjunction with a permitted use;

(ii) Mobile food services (72233) are regulated by chapter 5.57 DMMC;

(iii) Drive-through facilities are prohibited;

(iv) Buildings containing only a full-service restaurant (72211) are not subject to the minimum building height provisions contained in this chapter;

(16) Other services (81), subject to the following limitations:

(a) The following uses are prohibited:

(i) Carwashes (811192), except automotive detail shops;

(ii) Other automotive repair and maintenance (811198);

(iii) Death care services (8122);

(iv) Industrial launderers (812332); and

(v) Commercial parking lots and garages (812930);

(b) Automobile body, paint, interior, and/or glass repair (81112), general automotive repair (811111), automotive exhaust system repair (811112), automotive transmission repair (811113), and automotive oil change and lubrication shops (811191) shall be allowed in the PR-C1 zone; provided, that all of the following requirements shall be met:

(i) The proposed use shall be located within a building constructed on or before October 30, 2009, and said building is or has been previously used for such use; and

(ii) The proposed use shall be fully located within an enclosed building area; and

(iii) Any building or structure that the proposed use is located or proposed to be located within shall not be expanded or enlarged in gross floor area or volume after October 30, 2009; and

(iv) Any business owner proposing to use a building or structure that the proposed use is located or proposed to be located within shall demonstrate to the city of Des Moines, South King Fire and Rescue, and Puget Sound Clean Air Agency that quantities, storage, and transport of hazardous materials are properly managed, work areas provide adequate containment to avoid pollution runoff, and facilities are equipped with proper pretreatment devices to avoid discharge of pollutants to the air or public drainage systems;

(c) Pet boarding (812910) is allowed only in conjunction with a permitted use;

(17) Public administration (92), except the following:

(a) Correctional institutions (92214); and

(b) Parole offices and probation officers (92215);

(18) Mixed use (no NAICS code) when dwellings are located above the second story of the building;

(19) Public parks (No NAICS code); and

(20) Public utility facilities and appurtenances necessary for the distribution of utility services to final customers within the immediate area. [Ord. 1467 § 1, 2009: Ord. 1267 § 2(part), 2000.]

18.31.050 PR-C1 – Uses allowed in conjunction with a permitted use.

The uses listed below, and uses similar in nature as determined by the community development director, are only allowed in the PR-C1 zone when located within the same building as a permitted use. Uses are more fully described in the "North American Industrial Classification System." Listed uses may be otherwise conditioned in this code. The numbers in parentheses following each of the following listed uses refer to North American Industrial Classification System (NAICS) code numbers:

(1) Fast food restaurants (722211);

(2) Pet boarding (812910). [Ord. 1267 § 2(part), 2000.]

18.31.060 PR-C2 – Permitted uses.

Only those uses listed below, and uses similar in nature as determined by the community development director, are permitted in the PR-C2 zone. Uses identified in this section are more fully described in the "North American Industrial Classification System." Listed uses may be otherwise conditioned in this code. The numbers in parentheses following each of the following listed uses refer to North American Industrial Classification System (NAICS) code numbers:

(1) Except for the uses listed below, uses permitted in the PR-C1 zone are permitted in the PR-C2 zone:

(a) Hospitals (622);

(b) Nursing and residential care facilities (623);

(c) Community housing services (62422);

(d) Hotels and motels (72111);

(e) Mixed use (no NAICS code);

(f) Adult entertainment facilities and adult motion picture theaters (no NAICS code);

(2) Tire dealers (44132);

(3) Gasoline stations (447);

(4) Automotive repair and maintenance (8111). [Ord. 1267 § 2(part), 2000.]

18.31.070 PR-C2 – Uses allowed in conjunction with a permitted use.

The uses listed below, and uses similar in nature as determined by the community development director, are only allowed in the PR-C2 zone when located within the same building as a permitted use. Uses are more fully described in the "North American Industrial Classification System." Listed uses may be otherwise conditioned in this code. The numbers in parentheses following each of the following listed uses refer to North American

Industrial Classification System (NAICS) code numbers:

(1) Fast food restaurants (722211);

(2) Pet boarding (812910);

(3) Light manufacturing, processing, and assembly of goods sold onsite at retail (no NAICS code). [Ord. 1267 § 2(part), 2000.]

18.31.080 Environmental performance standards and general limitations.

Every use permitted within the PR zone shall conform to the following general limitations and standards:

(1) Provisions applicable to all PR zones:

(a) Accessory uses are permitted that are customarily appurtenant or incidental to the principally permitted uses.

(b) Landscaping and screening are required in accordance with chapter 18.41 DMMC.

(c) Off-street parking and loading areas are required in accordance with chapter 18.44 DMMC.

(d) Mixed-use development shall conform to the following limitations and standards:

(i) Within a mixed-use building, nonresidential building area shall be located at or near street level, and shall be visible from the public right-of-way;

(ii) Within the PR-C1 zone, structures containing only residential uses are allowed on corner and through lots when a commercial or mixed-use structure is located along the Pacific Highway South frontage; and

(iii) On-site multifamily recreation area is required for developments with four or more dwelling units as provided by chapter 18.45 DMMC, except the minimum area of common recreation space per dwelling unit shall be 50 square feet and the private recreation space per dwelling unit shall be 40 square feet for buildings over 35 feet.

(e) Capital Facilities, Utilities, and Public Services.

(i) All capital facilities, utilities, and public services must be adequate to support the proposed land use or structure, including but not limited to drainage; street and walkway systems, both on-site and off-site; sewer and water systems; fire protection; police service; electrical power; and telecommunications. Improvements to capital facilities, utilities, and public services shall conform to adopted plans, policies, and regulations.

(ii) All development shall be required to install or pay for a proportional share of any new facilities or utilities required to serve the development. Mechanisms such as latecomer's agreements and impact fees may be used to equitably distribute the cost of required improvements.

(iii) Except for high-voltage (i.e., 115 kV) transmission circuitry, all preexisting and newly installed utilities on site and within the abutting rights-of-way shall be placed underground.

(f) Nuisances.

(i) As provided by chapter 9.64 DMMC, no use, activity, or equipment shall be permitted that creates a nuisance or is offensive, objectionable, or hazardous by reason of creation of odors, noise, sound, light or glare, steam, vibrations, dust, dirt, smoke, or other pollutants, fumes or gases (toxic or nontoxic), radiation, explosion or fire hazard, or by reason of the generation, disposal, or storage of hazardous or dangerous wastes or materials in a manner(s) inconsistent with Title 70 RCW as presently constituted or as may be subsequently amended.

(ii) In addition to the uses, activities and equipment deemed a nuisance under the provisions of subsection (1)(f)(i) of this section, the following are declared to be nuisances in all PR zones: all houses, housing units, other buildings, premises or places of resort where controlled substances identified in Article II of chapter 69.50 RCW and not authorized by that chapter, are manufactured, delivered, or possessed, or where any such substance not obtained in a manner authorized by chapter 69.50 RCW is consumed by ingestion, inhalation, injection, or any other means.

(iii) Any person, firm or corporation found by a court of competent jurisdiction to be keeping or maintaining a nuisance as provided in this chapter shall be liable for all costs and expenses of abating the same, when the

nuisance is abated by any officer of the city, and the costs and expenses shall be taxed as part of the cost of said prosecution against the party liable, to be recovered as other costs are recovered. In addition to other powers given in the Des Moines Municipal Code and other applicable law to collect such costs and expenses, the city may bring suit for the same in any court of competent jurisdiction against the person, firm or corporation allowing, creating, enabling, keeping, maintaining or otherwise failing to correct the nuisance so abated.

(g) Hazardous Substances.

(i) No use permitted in this chapter, with the exception of public utility and service facilities, shall store any hazardous substance, except that for the purposes of this chapter the following substances shall be exempt:

(A) Heating oil stored in an underground tank sufficiently contained so as to preclude soil and ground water contamination;

(B) Gasoline stored in an approved Underwriters Laboratory container;

(C) Prepackaged retail quantities of fertilizers, pesticides, and auto and home care products only for home use.

(ii) Failure to comply with any of the requirements of this section shall be deemed a violation and shall result in enforcement by civil penalty as set forth in DMMC 18.72.060 and/or civil violation enforcement penalties or abatement procedures as established in chapter 1.28 DMMC. Any person or business who fails to comply with the provisions of this chapter, or allows a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court.

(h) In reviewing a proposed permitted use, the community development director may include minimal conditions of approval as may be reasonably needed to ensure that the use is consistent with the purpose of the PR zone, and to minimize the likelihood of adverse impacts.

(2) Provisions Applicable to the PR-R Zone.

(a) Parking and loading areas within the PR-R zone are further allowed as follows:

(i) For land uses with more than 20 required off-street parking spaces, a minimum of 70 percent of the total off-street spaces provided shall be located within a parking garage structure.

(ii) Parking spaces not within a parking garage structure shall be subject to maximum lot coverage limitations.

(b) Multifamily recreation area is required in accordance with chapter 18.45 DMMC, except that the minimum area of common recreation space per dwelling unit shall be 50 square feet and the private recreation space per dwelling unit shall be 40 square feet for buildings over 35 feet.

(c) New construction shall conform to applicable Federal Aviation Administration regulations, including Part 77, Federal Aviation Regulations, Objects Affecting Navigable Airspace, as presently constituted or as may be subsequently amended.

(3) Provisions Applicable to the PR-C1 Zone.

(a) Off-street parking not within a parking garage structure shall occupy not more than 35 percent of the building site.

(4) Provisions Applicable to the PR-C1 and PR-C2 Zones.

(a) All uses shall be primarily contained within an enclosed structure except the following:

(i) Outdoor seating and dining;

(ii) Signs;

(iii) Loading areas;

(iv) Motor vehicle fuel pumps;

(v) Retail nursery and garden centers (44422) in the PR-C2 zone;

(vi) Minor and incidental outdoor display areas for merchandise sold on site as approved through the design review process;

(vii) Play/recreation areas; and

(viii) Miscellaneous storage when limited to 10 percent of the site area and when perimeter landscaping and fencing is provided as approved through the design review process.

(b) Automobile repair, automobile service stations, and similar uses shall conform to the following limitations and standards:

(i) Automobile repair and the installation of automobile parts and accessories shall be primarily contained within an enclosed structure;

(ii) Unless specifically authorized by the community development director, views into automobile service bays from Pacific Highway South shall be diminished by building orientation, screening, or other means;

(iii) Unless specifically authorized by the public works director, vehicular access shall be limited to one driveway per street frontage;

(iv) Motor vehicle fuel pump islands shall be set back a minimum of 15 feet from property lines;

(v) A six-foot-high, 100 percent sight-obscuring fence shall be provided along property lines that abut residential properties as designated by the Greater Des Moines Comprehensive Plan; and

(vi) Vehicle storage shall be limited to those vehicles contracted for repair or service.

(c) Social service facilities shall conform to the following limitations and standards:

(i) Outdoor play/recreation areas for children shall be set back a minimum of five feet from property lines; and

(ii) Unless specifically authorized by the community development director, passenger loading and unloading areas shall be provided on site. [Ord. 1410 § 1, 2007: Ord. 1267 § 2(part), 2000.]

18.31.090 Dimensional standards.

(1) Lot Area. Every lot shall have a minimum area of 7,500 square feet.

(2) Lot Width. Every lot shall have a minimum width of 75 feet.

(3) Front Yard.

(a) In the PR-R zone, every lot shall have a front yard of not less than 15 feet.

(b) In the PR-C1 and PR-C2 zones, no front yard is required.

(4) Side Yard.

(a) In the PR-R zone, every lot shall have a side yard on each side of the lot. The side yards shall have a width of not less than 10 feet.

(b) In the PR-C1 and PR-C2 zones, no side yard is required.

(5) Rear Yard. Every lot shall have a rear yard of not less than 15 feet.

(6) Measurement of Building Height.

(a) PR-R zone: Building height shall be measured from average finish grade.

(b) PR-C1 zone: Building height shall be measured from mean sidewalk grade of Pacific Highway South.

(c) PR-C2 zone: Building height shall be measured from mean sidewalk grade as follows:

(i) Building height for properties abutting Pacific Highway South is measured from Pacific Highway South.

(ii) Building height for properties abutting 24th Avenue South is measured from 24th Avenue South.

(iii) Building height for properties that do not abut Pacific Highway South or 24th Avenue South is measured from South 216th Street.

(7) Minimum Building Height.

(a) Except for buildings containing only a full-service restaurant or a gasoline service station, and other instances specifically authorized by the city manager or designee in writing, no building shall be less than the height specified below:

(i) PR-R zone: 35 feet.

(ii) PR-C1 zone: 35 feet.

(iii) PR-C2 zone: No minimum building height.

(b) For the purposes of this subsection, minimum building height shall not include decorative towers or appurtenances, roof slopes out of character with the building's architecture, or other contrivances provided solely for achievement of the required minimum building height. In calculating minimum building height, the city manager or designee shall include regular architectural features enclosing functional, occupiable building areas.

(8) Maximum Building Height. Buildings and structures may be built to the height specified:

(a) PR-R zone: 35 feet. Buildings may be built to a height of 120 feet with approval of a condominium height bonus or with approval of a floor area clustering height bonus as provided by this chapter.

(b) PR-C1 zone:

(i) Except as provided by subsection (8)(b)(ii) of this section, 55 feet.

(ii) In that portion of the PR-C1 zone east of Pacific Highway: 85 feet.

(c) PR-C2 zone: 55 feet.

(9) Building Height Limitation Adjacent to Single-Family. When an abutting property is designated single-family residential by the Des Moines comprehensive plan, building height shall be limited as follows:

(a) Within 20 feet of the abutting single-family residential property, maximum building height shall be 35 feet.

(b) Within 40 feet of the abutting single-family residential property, maximum building height shall be 45 feet.

(c) During the design review and environmental review, the city manager or designee may impose other conditions of approval in order to mitigate potential height, bulk, and scale impacts upon adjacent single-family residents not sufficiently mitigated by existing regulations.

(10) Condominium Building Height Bonus. In the PR-R zone, the city manager or designee may authorize buildings 36 to 120 feet in height when a condominium declaration which satisfies chapter 64.34 RCW is recorded for all dwellings within the building.

(11) Floor Area Clustering Building Height Bonus. In the PR-R zone, the city manager or designee may authorize buildings up to 200 feet in height when all of the following provisions are met:

(a) A condominium height bonus was granted pursuant to the condominium building height bonus established by subsection (10) of this section.

(b) The total floor area of the building does not exceed the total maximum floor area of a building that could have been built under the condominium building height bonus established by subsection (10) of this section.

(c) The minimum building site area is 43,560 square feet.

(d) Useable pedestrian plazas and open space are provided.

(12) Height Allowance for Enhanced Design of Distinctive Rooflines. In the PR-C1, PR-C2 and PR-R zones, a portion of a building may exceed the maximum building height; provided, that the following provisions are met:

(a) The purpose of the additional height for the building is to provide a roofline that is of distinctive form through the use of design elements such as pitched roofs, sloped roofs, vertical offsets or other similar roof features that achieve the goals of Pacific Ridge Design Guideline 2.B.2.

(b) The maximum building height established in subsections (8) and (9) of this section shall only be increased by a maximum of 10 percent.

(c) Architectural features associated with the distinctive roofline shall be used to emphasize significant architectural elements of the building such as the main entrance of the building or the building's orientation to a corner, or to provide for pitched or sloped roofs for the building.

(d) Height allowed for distinctive rooflines under this section shall not be used to determine the building height for the purposes of establishing the maximum gross floor area under DMMC 18.31.110(3).

(e) The building area or amount of building structure extending above the maximum height established in subsection (9) of this section shall be limited to 30 percent of the building roof deck area. When multiple building rooflines exist at different building levels or stories, the 30 percent requirement shall only apply to the area of the roof deck of the tallest portion of a building.

(13) Placement of Buildings.

(a) Where a building site abuts the public right-of-way of Pacific Highway South, at least one of the main buildings on the site shall be placed as follows:

(i) Except as provided below, the building shall abut, or be in close proximity to, the public right-of-way of Pacific Highway South.

(ii) Through the permit review process, the city manager or designee may determine it is in the public interest to allow the proposed building to be set back from the right-of-way. In considering a request for setback, the director shall consider matters such as adopted land use policies, vehicular and pedestrian circulation, sight distances, landscaping, existing site improvements, adjacent site improvements, easements or other encumbrances, and public benefit features such as plazas and public artwork.

(b) The distance between a building containing dwelling units and any other building shall be not less than 10 feet.

(c) On the rear third of an interior lot, accessory buildings not containing dwellings may be built to the side lot lines and the rear lot line; provided, not less than 10 feet of the rear lot line shall be free and clear of buildings.

(d) On the rear one-third of a corner lot:

(i) Accessory buildings not containing dwellings may be built to the interior side lot line and the rear lot line.

(ii) Where a setback from the street is required for the adjoining lot, no building shall be erected closer than 10 feet to the street side lot line.

(e) On the rear third of a reverse corner lot:

(i) Accessory buildings not containing dwellings may be built to the interior side lot line.

(ii) Where a setback from the street is required for the adjoining lot, no building shall be erected closer than 10 feet to the street side lot line.

(iii) No building shall be erected closer than five feet to the rear lot line. [Ord. 1559 § 1, 2012: Ord. 1513 § 1, 2011: Ord. 1405 § 1, 2007: Ord. 1267 § 2(part), 2000.]

18.31.100 General site design requirements.

(1) Design Guidelines. Design guidelines shall be adopted for new construction within Pacific Ridge. All development proposals shall demonstrate substantial compliance, as determined by the community development director, with the adopted Pacific Ridge design guidelines. The guidelines shall provide objectives and techniques for ensuring that new construction provides lasting benefit to the community; minimizes incompatibility among land uses; and promotes crime prevention. Design guidelines shall address site design issues including, but not limited to, the following:

(a) Placement and orientation of buildings and building entrances;

(b) Vehicular access, parking, and circulation;

(c) Pedestrian orientation and access;

(d) Orientation to transit;

(e) Placement and screening of service and loading areas;

(f) Landscaping;

(g) Freestanding signage;

(h) Screening of parking and other site features;

(i) Placement and design of open space;

(j) Crime prevention; and

(k) Exterior lighting. [Ord. 1267 § 2(part), 2000.]

18.31.110 General building design requirements.

(1) Design Guidelines. Design guidelines shall be adopted for new construction within Pacific Ridge. All development proposals shall demonstrate substantial compliance, as determined by the community development director, with the adopted Pacific Ridge design guidelines. The guidelines shall provide objectives and techniques for ensuring that new construction provides lasting benefit to the community; minimizes incompatibility among land uses; and promotes crime prevention. Design guidelines shall address building design issues including, but not limited to, the following:

(a) Building height, bulk, and scale;

(b) Building modulation and fenestration;

(c) Building silhouette and roof design;

(d) Placement and orientation of building entrances, common areas, activity areas, balconies, and other features;

(e) Exterior building materials;

(f) Window and door detailing;

(g) Continuity/variety in building design;

(h) Orientation to transit;

(i) Wall signage;

(j) Crime prevention;

(k) Awnings, covered walkways, and other weather protection; and

(l) Placement and screening of mechanical equipment.

(2) Minimum floor-to-ceiling height for dwellings. Dwellings shall have a minimum floor-to-ceiling height of eight feet, six inches.

(3) Maximum Gross Floor Area.

(a) The maximum gross floor area for buildings within Pacific Ridge neighborhood shall be determined by multiplying the lot area of the site by the floor area ratio number established in the following table:

Building Height	PR-C1 and PR-C2 FAR	PR-R FAR
35 Feet or Less	2.8	2.8
35 – 50	3.5	3.5
50 – 60	4	4.0
60 -70	4.5	4.5
70 – 80	5	5
80 – 90	5.5	5.5
90 – 100	Not Applicable	6.5
100 – 110	Not Applicable	7.5
110 – 120	Not Applicable	9
> 120	Not Applicable	9

(b) Gross floor area shall include the total square footage of the enclosed building; provided, that:

(i) For properties located adjacent to Pacific Highway South, the area of parking garages constructed below the adjacent sidewalk grade on Pacific Highway South shall not be included in the calculation of gross floor area.

(ii) For all other properties in the Pacific Ridge neighborhood, the area of parking garages constructed below the lowest sidewalk grade adjacent to the property line shall not be included in the calculation of gross floor area.

(4) Within the PR-C1 and PR-C2 zones, structural encroachments into the right-of-way, such as cornices, signs, eaves, sills, awnings, bay windows, balconies, facade treatment, marquees, etc., shall conform to the provisions set forth by Title 12 DMMC, the Uniform Building Code, and the following provisions:

(a) Structural encroachments into the right-of-way shall be capable of being removed without impact upon the structural integrity of the primary building;

(b) Structural encroachments into the right-of-way shall not result in additional building floor area than would otherwise be allowed;

(c) Except for awnings, signs, and marquees, the maximum horizontal encroachment into the right-of-way shall be two feet;

(d) The maximum horizontal encroachment in the right-of-way by signs shall be four feet;

(e) The maximum horizontal encroachment in the right-of-way by awnings and marquees shall be six feet;

(f) The minimum horizontal distance between the structural encroachment and the curbline shall be two feet;

(g) Except for awnings over the public sidewalk which may be continuous, the maximum length of each balcony, bay window, or similar feature that encroaches the right-of-way shall be 12 feet;

(h) Structural encroachments into the right-of-way shall maintain adequate distance away from utility, transportation, or other facilities as determined by the community development director in consultation with the public works director;

(i) The applicant shall demonstrate proof of public liability insurance and consent to a public place indemnity agreement;

(j) Owners of structural encroachments into the right-of-way must clear the public right-of-way when ordered to do so by city authorities for reasons of public health or safety; and

(k) In reviewing a proposed structural encroachment into the public right-of-way, the community development director may include conditions as may be reasonably needed to ensure that the structure is consistent with the purpose of the PR zone, and to minimize the likelihood of adverse impacts. The community development director shall deny the request if it is determined that adverse impacts cannot be mitigated satisfactorily. [Ord. 1513 § 2, 2011: Ord. 1267 § 2(part), 2000.]

Chapter 18.32

UNCLASSIFIED USES

Sections

18.32.010 Purpose.

All of the following uses described in this chapter, and all matters directly related thereto, are declared to be uses possessing characteristics of such unique and special form as to make impractical their being included automatically in any classes of use as set forth in the various zones defined in this title, and the authority for the location and operation thereof shall be subject to review and the issuance of a use permit. The purpose of a review shall be to determine that the characteristics of any such use shall not be unreasonably incompatible with the type of uses permitted in surrounding areas and for the further purpose of stipulating such conditions as may reasonably assure that the basic purpose of this title shall be served. Factors to be considered are as set forth in DMMC 18.36.050. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.44.010), 1964.]

18.32.020 Uses requiring unclassified use permit.

The following uses may locate subject to the issuance of an unclassified use permit processed as provided in chapter 18.60 DMMC:

(1) Booster stations or conversion plants with the necessary buildings, apparatus, or appurtenances incident thereto of public utilities or utilities operated by mutual agencies, except these uses are specifically excluded from the D-C, RS, SR and S-E zones. Distribution mains are permitted in any zone without review;

(2) Sewage treatment plants, except such use is not permitted in the downtown commercial (D-C) zone;

(3) Sanitary Fills. Reclamation for public purpose by public agency, including drainage or other facilities for off-site discharge of storm water runoff or other liquids or substances, except such use is not permitted in the downtown commercial (D-C) zone; and provided further, that closed drainage systems or "tight lines" constructed and maintained to sanitary sewer standards (Washington State/APWA) are excluded from this requirement, and drainage systems that are substantially closed are excluded from this requirement, when:

(a) There has been a finding by the city's responsible SEPA official that predicted environmental impacts are significantly less than projected in a totally closed system proposal; and

(b) The system is approved by the city council in the form of an interlocal agreement;

(4) Towing operations, including storage of impounded vehicles, but no wrecking yards, except that such use is permitted only in the highway commercial (H-C) zone;

(5) Horticultural nurseries, including on-premises sales uses, except such use is not permitted in the downtown commercial (D-C) zone;

(6) Mixed uses, except as otherwise regulated and permitted in the downtown commercial (D-C) and Pacific Ridge (PR) zones;

(7) Group home facilities, in residential zones, personal to the applicant and nontransferable without prior consent of the city council, and subject to the provisions governing home occupations found in DMMC 18.08.020(18), except such use is not permitted in the downtown commercial (D-C) zone;

(8) Bed and breakfast facilities, in residential zones, personal to the applicant and nontransferable without prior consent of the city council, and subject to the provisions governing home occupations found in DMMC 18.08.020(18);

(9) Unclassified Uses Limited to the D-C Zone. The uses listed in this subsection, and uses similar in nature as determined by the planning, building and public works director, may be permitted in the D-C zone, and only in the D-C zone, subject to issuance of an unclassified use permit as provided in this chapter. Each use is more fully described in the "Standard Industrial Classification Manual." The numbers in parentheses following each of the following listed uses refer to the Standard Industrial Classification (SIC) code numbers:

(a) Water transportation of passengers (448); and

(b) Communications facilities (48); and

(c) Electric (4911), natural gas (4924), domestic water (4941), and sanitary sewerage services (4952); and

(d) Colleges, universities, junior colleges, professional schools (822); and

(e) Unclassifiable establishments (99) and uses requiring an unclassified use permit as itemized in DMMC 18.32.020 and as otherwise provided in this chapter;

(10) Unclassified Uses Limited to the B-P Zone. Permitted uses listed in DMMC 18.25.020 utilizing hazardous materials exceeding the quantities in Uniform Building Code Table 3-D, "Exempt Amounts of Hazardous Materials Presenting a Physical Hazard – Maximum Quantities Per Control Area," and Table 3-E, "Exempt Amounts of Hazardous Materials Presenting a Health Hazard – Maximum Quantities Per Control Area," as presently constituted or subsequently amended, may only be permitted subject to issuance of an unclassified use permit as provided in this chapter;

(11) Unclassified Uses Limited to the PR Zone. The uses listed in this subsection, and uses similar in nature as determined by the planning, building, and public works director, may be permitted in the PR zone, and only in the PR zone, subject to issuance of an unclassified use permit as provided in this chapter. Each use is more fully described in the "North American Industry Classification System" (NAICS). The numbers in parentheses following each of the following listed uses refer to NAICS code numbers:

(a) Electric power transmission facilities (22112), such as transformer stations; and

(b) Commuter rail systems (485112);

(12) Unclassified Uses Limited to the PR-C2 Zone.

(a) The uses listed in this subsection may be permitted in the PR-C2 zone, and only in the PR-C2 zone, subject to issuance of an unclassified use permit as provided in this chapter;

(b) Secure community transition facilities as defined by RCW 71.09.020, as presently constituted or as may be subsequently amended, may be permitted in the PR-C2 zone when all of the following conditions are satisfied:

(i) All requirements of chapter 71.09 RCW as presently constituted or as may be subsequently amended;

(ii) The city council finds that the application conforms to the equitable distribution goals, objectives, and requirements of chapter 71.09 RCW. If the city council finds that the application raises public safety concerns that outweigh equitable distribution objectives, the city council may assign greater weight to public safety concerns than to equitable distribution;

(iii) All requirements of "Policy Guidelines: The Siting and Operation of Secure Community Transition Facilities" published by the Washington State Department of Social and Health Services as presently constituted or as may be subsequently amended;

(iv) All goals, policies, and strategies of the Greater Des Moines Comprehensive Plan;

(v) All requirements of the Des Moines Municipal Code;

(vi) All requirements of the contract and mitigation agreements authorized by chapter 71.09 RCW between the city and the Washington State Department of Social and Health Services;

(vii) All conditions of approval deemed necessary by the city council and allowed by law to mitigate potential adverse impacts and to preserve public health, safety and welfare. If the city council finds that potential adverse impacts cannot be mitigated, the city council may deny the permit;

(13) Unless authorized by other provisions of this title, essential public facilities as defined by RCW 36.70A.200, as presently constituted or as may subsequently be amended, except such uses are not permitted in the downtown commercial (D-C) zone. [Ord. 1493 § 3, 2010: Ord. 1374 § 3, 2006: Ord. 1306 § 1, 2002: Ord. 1267 § 3, 2000: Ord. 1237 §§ 2, 3, 1999; Ord. 1199 § 3, 1997: Ord. 1170 § 5, 1996; Ord. 1140 § 6, 1995; Ord. 1104 § 16, 1994; Ord. 693 §§ 3, 4, 1987; Ord. 674 § 1, 1986; Ord. 645 § 1, 1985; Ord. 617 § 2, 1985; Ord. 588 § 1, 1984; Ord. 575 § 1, 1983; Ord. 527 § 1, 1981; Ord. 175 § 1(24.44.020), 1964.]

18.32.030 Uses requiring conditional use permit.

The following uses may locate subject to the issuance of a conditional use permit processed as provided in the hearing examiner code:

(1) Cemeteries; except such use is not permitted in the downtown commercial (D-C) zone; and further provided:

(a) No building shall be located closer than 100 feet from a boundary line;

(b) A protective fence and a landscaped strip of evergreen trees and shrubs at least 10 feet in width shall be installed on all common boundary lines with residential zoned property;

(2) Columbariums, crematories, and mausoleums; provided, these uses are specifically excluded from the D-C and all residential zones unless inside a cemetery;

(3) Commercial establishments or enterprises involving large assemblages of people or automobiles as follows; provided, these uses are specifically excluded from the D-C and all residential zones:

(a) Amusement parks;

(b) Boxing and wrestling arenas;

(c) Ballparks;

(d) Fairgrounds and rodeos;

(e) Golf driving ranges;

(f) Labor camps (transient);

(g) Open-air theaters;

(h) Race tracks, drag strips, motorcycle hills, and Go-Kart tracks;

(i) Stadiums;

(4) Fire stations and public works maintenance and storage facility buildings when located in any residential zone; provided, the following conditions shall be conformed to:

(a) All buildings and structures shall maintain a distance of not less than 20 feet from any property line that is a common property line with residential zoned property; and

(b) A building from which fire-fighting equipment emerges onto a street shall maintain a distance of 35 feet from such street.

(5) Hospitals, mental and alcoholic; provided, they are specifically excluded from all single-family residential, RA, RM-2,400 and RM-1,800 and D-C zones;

(6) Institutions for training of religious orders except such use is not permitted in the downtown commercial (D-C) zone;

(7) Antenna systems which:

(a) Are not within the limitation of DMMC 18.08.020(2)(h) or (8); or

(b) Consist of parabolic antennas such as microwave dishes; or

(c) Consist of broadcasting or communication stations which transmit electromagnetic radiation;

(8) Recreational areas, commercial, including yacht clubs, beach clubs, tennis clubs, parks, marinas, and similar activities;

(9) Fraternal societies when located in single-family residential zone;

(10) Day care centers, but excluding family day care providers subject to the following minimum conditions:

(a) A play yard or equipment yard shall not be located in any required side or front yard;

(b) All buildings and structures on the lot shall maintain a distance of not less than 20 feet from any property line that is common property line with single-family residential property. If a greater setback is specified in a particular zone then the setback requirements of the particular zone shall prevail over the minimum setback set forth in this subsection;

(c) No day care center shall be located within 150 feet of a highway commercial zone;

(d) State licensing standards for such facilities, chapter 388-73 WAC, shall be met;

(e) Such uses shall comply with the parking code requirements of chapter 18.44 DMMC.

(11) Telecommunication facilities as described in the provisions of Title 20 DMMC.

(12) Wholesale trade and distribution of groceries (SIC 5141), grocery and related products not elsewhere classified (SIC 5149), fish and seafoods (SIC 5146), meats and meat products (SIC 5147), manufacturing and processing of sausages and other prepared meat products (SIC 2013), and servicing machines, coin-operated (SIC 3589); provided, the following conditions shall be conformed to:

(a) Uses shall be limited only to property zoned C-C, community commercial; and

(b) Required perimeter landscape and screening requirements adjacent to residentially zoned properties shall be increased as follows:

(i) Minimum width of required landscape planters shall be 15 feet; and

(ii) Planting beds shall contain appropriately amended soils and be bermed to a height of three feet; and

(iii) Type I landscape plant material requirements shall include the use of eight-foot-tall specimen trees throughout; and

(iv) A solid wall six feet in height shall be constructed adjacent to the property line; and

(c) Submittal of a traffic report and a binding truck routing plan prepared by a licensed engineer demonstrating that impacts to local streets will not be significantly adverse and that the existing street system has both the capacity and physical improvements necessary to accommodate the type of vehicles serving the uses proposed. [Ord. 1527 § 1, 2011: Ord. 1493 § 4, 2010: Ord. 1237 § 4, 1999; Ord. 1200 § 123, 1997: Ord. 1197 § 27, 1997; Ord. 1106 § 7, 1994: Ord. 793 § 4, 1989; Ord. 445 § 5, 1978; Ord. 391 § 1, 1976; Ord. 248 § 8, 1969; Ord. 175 §§ 1(24.44.030), 28, 1964.]

18.32.040 Yard requirements.

The requirements for front and side yards and open spaces applicable to the particular zone in which any such use is proposed to be located shall prevail, unless in the findings and

conditions recited in the action dealing with each such matter, specific additions are made with respect thereto. [Ord. 175 § 1(24.44.040), 1964.]

18.32.050 Permitted height – Floor area – Area coverage.

The provisions applying to height, floor area, and lot area coverage applicable to the particular zone in which any such use is proposed to be located shall prevail, unless in the findings and conditions recited in the action dealing with each such matter, specific additional limitations are made with respect thereto. [Ord. 175 § 1(24.44.050), 1964.]

18.32.060 Off-street parking and loading area requirements.

The requirements for provision of off-street parking and loading areas applicable to the particular use shall prevail, unless in the findings and conditions recited in the action dealing with each such matter, specific additional requirements are made with respect thereto. [Ord. 175 § 1(24.44.060), 1964.]

Chapter 18.33

KEEPING OF ANIMALS IN RESIDENTIAL ZONES[1]

Sections

18.33.010 Scope.

This chapter establishes special regulations for the keeping of animals in any zone where a dwelling unit is permitted. [Ord. 532 § 1, 1981.]

18.33.020 Applicability.

This chapter applies to the keeping of animals in any zone where a dwelling unit is permitted; provided, that with respect to suburban estate zones found in chapter 18.19 DMMC this chapter is intended to supplement the provisions contained therein, and any conflict between this chapter and chapter 18.19 DMMC shall be resolved in favor of chapter 18.19 DMMC; and provided further, that this chapter is intended to supplement the provisions of DMMC 18.08.020(19) (related to the keeping of horses or cattle) and any conflict

1. For additional provisions on animal regulations, see Title 8 DMMC.

between this chapter and DMMC 18.08.020 (19) shall be resolved in favor of this chapter; and provided further, that the keeping of animals is forbidden in commercial zones except as otherwise specifically permitted. [Ord. 1237 §§ 3, 4, 1999; Ord. 532 § 2, 1981.]

18.33.030 Purpose of limitations.

The limitations on keeping of animals in residential zones contained in this chapter have the following purposes:

(1) To maintain the general health and sanitation of the city;

(2) To maintain the character of residential neighborhoods within the city;

(3) To minimize any nuisances which may result from the keeping of animals. [Ord. 532 § 3, 1981.]

18.33.040 Types of animals regulated.

Animals are regulated according to the following categories. The expression "adult animal" refers to any animal that has attained the age of 90 days.

(1) Household Pets. The following adult animals are regulated as household pets:

(a) Three dogs or fewer per dwelling unit;

(b) Three cats or fewer per dwelling unit;

(c) Three rabbits or fewer per dwelling unit;

(d) Two miniature potbellied pigs per dwelling unit;

(e) In combination, no more than three of the following animals: dogs, cats, miniature potbellied pigs, or rabbits per dwelling unit;

(f) Gerbils;

(g) Guinea pigs;

(h) Hamsters;

(i) Mice;

(j) Cage birds;

(k) Tank fish;

(l) Nonvenomous reptiles and amphibians; and

(m) Other animals normally associated with a dwelling unit, and that are generally housed within the dwelling unit.

(2) Small Domestic Animals. The following adult animals are regulated as small domestic animals:

(a) More than three dogs per dwelling unit;

(b) More than three cats per dwelling unit;

(c) More than three rabbits per dwelling unit;

(d) More than two miniature potbellied pigs per dwelling unit;

(e) In combination, more than three of the following animals: dogs, cats, miniature potbellied pigs, or rabbits per dwelling unit; and

(f) Fowl.

(3) Large Domestic Animals. The following adult animals are regulated as large domestic animals:

(a) Horses;

(b) Cattle;

(c) Sheep;

(d) Pigs;

(e) Goats; and

(f) Other grazing or foraging animals.

(4) Bees. [Ord. 1091 § 2, 1994: Ord. 532 § 4, 1981.]

18.33.050 Minimum requirements – Additional controls authorized when.

DMMC 18.33.060 through 18.33.090 constitute the minimum requirements for the keeping of animals in the city. Nothing contained in DMMC 18.33.060 through 18.33.090 shall limit the authority of the city manager to require additional controls if, in his judgment, additional controls are needed to effect the purposes of this chapter. Further, nothing contained in DMMC 18.33.060 through 18.33.090 shall relieve a keeper of animals from compliance with any other city, county, or state law regulating the keeping of animals. The city manager is authorized to delegate his review authority. [Ord. 532 § 5(part), 1981.]

18.33.060 Household pet requirements.

Minimum requirements for the keeping of household pets are as follows:

(1) Required procedure: none;

(2) Application information: none;

(3) Maximum number of adult animals per one dwelling unit:

(a) Dogs: three;

(b) Cats: three;

(c) Rabbits: three;

(d) Miniature potbellied pigs: two;

(e) In combination, a total number of dogs, cats, miniature potbellied pigs, or rabbits: three;

(f) Other: no maximum;

(4) Minimum lot size: As required by general zoning regulations;

(5) Minimum setback: None;

(6) Special regulations and requirements: Household pets, excluding dogs, cats, rabbits, and miniature potbellied pigs shall be housed within the dwelling unit. If housed outside of the dwelling units, household pets excluding dogs, cats, rabbits, and miniature potbellied pigs are regulated as small domestic animals. [Ord. 1091 § 3, 1994: Ord. 532 § 5(A), 1981.]

18.33.070 Small domestic animal requirements.

Minimum requirements for the keeping of small domestic animals are as follows:

(1) Required procedure: City manager review;

(2) Application information:

(a) A site plan indicating the location of the dwelling units, and structure used to house the animals, and any roaming or grazing area;

(b) A vicinity map indicating the type of use on property abutting the subject property and the location of any structures on abutting property;

(c) The type and number of animals to be kept by the applicant;

(3) Maximum number of adult animals per one dwelling unit: 10 per 22,000 square feet, plus an additional five adult animals for each 11,000 square feet of lot size;

(4) Minimum lot size: 22,000 square feet per dwelling unit;

(5) Minimum setback: Any structure or enclosure used to house animals must be at least 35 feet from a property line and at least 45 feet from any dwelling unit located on an adjacent lot. Any "run" or animal exercise area must be at least 20 feet from any property line, and at least 30 feet from any dwelling unit located on an adjacent lot, and shall be constructed to effect these setbacks;

(6) Special regulations and requirements:

(a) The city may limit the number of animals allowed to less than the maximum considering:

(i) Proximity to dwelling units both on and off the subject property;

(ii) Lot size and isolation;

(iii) Compatibility with surrounding uses;

(iv) Potential noise impacts;

(b) The applicant must provide a suitable structure to house the animals, and must maintain that structure in a clean condition;

(c) If an abutting property owner files a signed and notarized statement in support of the request, the city may permit a "run" or exercise area to extend to the property line in common with the abutting property. Such release shall be effective until revoked in writing by the abutting property owner and the city;

(7) Screening: The city may require screening to mitigate financial, health, and aesthetic impacts on adjacent residential property when such residential property is used for residential purposes. The screening shall consist of a solid wall, a view-obscuring fence or hedge not less than five feet nor more than six feet in height, which will be erected and maintained on any exterior boundary that is common with property used for residential purposes, or shall consist of predominantly view-obscuring evergreen shrubs and trees of a type, number, location, height, and size approved by the city. [Ord. 1237 § 4, 1999; Ord. 532 § 5(B), 1981.]

18.33.080 Large domestic animal requirements.

Minimum requirements for the keeping of large domestic animals are as follows:

(1) Required procedure: City manager review;

(2) Application information:

(a) A site plan indicating the location of the dwelling units, and structure used to house the animals, and any roaming or grazing area;

(b) A vicinity map indicating the type of use on property abutting the subject property and the location of any structures on abutting property;

(c) The type and number of animals to be kept by the applicant;

(3) Maximum number of adult animals per one dwelling unit: One per 35,000 square feet and one per each additional 17,500 square feet;

(4) Minimum lot size: 35,000 square feet per dwelling unit;

(5) Minimum setback: Any structure or enclosure used to house animals must be at least 35 feet from a property line and at least 45 feet from any dwelling unit located on an adjacent lot. Roaming or grazing areas must be at least 20 feet from any property line, and at least 30 feet from any dwelling unit located on an adjacent lot, and shall be constructed to effect these setbacks;

(6) Special regulations and requirements:

(a) If an abutting property owner files a signed and notarized statement in support of the request, the city may permit roaming or grazing areas to extend to the property line in common with the abutting property. Such release shall be effective until revoked in writing by the abutting property owner and the city;

(b) The city may limit the number of animals allowed to less than the maximum considering:

(i) Proximity to dwelling units both on and off the subject property;

(ii) Lot size and isolation;

(iii) Compatibility with surrounding uses;

(iv) Potential noise impacts;

(c) The applicant must provide a suitable structure to house the animals, and must maintain that structure in a clean condition;

(7) Screening: The city may require screening to mitigate financial, health, and aesthetic impacts on adjacent residential property when such residential property is used for residential purposes. The screening shall consist of a solid wall, a view-obscuring fence or hedge not less than five feet nor more than six feet in height, which will be erected and maintained on any exterior boundary that is common with property used for residential purposes, or shall consist of predominantly view-obscuring evergreen shrubs and trees of a type, number, location, height, and size approved by the city. [Ord. 1237 § 4, 1999; Ord. 532 § 5(C), 1981.]

18.33.090 Bee requirements.

Minimum requirements for the keeping of bees are as follows:

(1) Required procedure: City manager review;

(2) Application information: Show compliance with subsections (4), (5) and (6) of this section;

(3) Maximum number of adult animals per one dwelling unit: No maximum;

(4) Minimum lot size: 12,500 square feet per dwelling unit;

(5) Minimum setback: Hive must be at least 20 feet from a property line;

(6) Special regulations and requirements:

(a) A hive must be enclosed by a fence, at least four feet high;

(b) The applicant must install at least two signs, measuring two square feet each, which provide notice and warning of the hive;

(7) Screening: The city may require screening to mitigate financial, health, and aesthetic impacts on adjacent residential property when such residential property is used for residential purposes. The screening shall consist of a solid wall, a view-obscuring fence or hedge not less than five feet nor more than six feet in height, which will be erected and maintained on any exterior boundary that is common with property used for residential purposes, or shall consist of predominantly view-obscuring evergreen shrubs and trees of a type, number, location, height, and size approved by the city. [Ord. 1237 § 4, 1999; Ord. 532 § 5(D), 1981.]

18.33.100 Notification to nearby property owners required when.

In order to give all interested parties an opportunity to avail themselves of the appellate procedure contained in DMMC 18.33.120, the following procedure shall be followed in applications for small domestic animals, large domestic animals, and bee review. The applicant shall give notice of the pending application to all property owners within 300 feet of the applicant's property in the same manner as that required for a zoning amendment. Thereafter, the city manager shall give notice of his decision to any such property owner who has previously requested such notification in writing. [Ord. 532 § 6, 1981.]

18.33.110 Modification of regulations – City manager authority.

The city manager shall have authority, either at the request of a property owner or on his own initiative, to modify any approval granted pursuant to this chapter if conditions on adjacent lots have substantially changed and the city manager concludes such modifications are necessary to effect the purposes of this chapter. [Ord. 532 § 7, 1981.]

18.33.120 Appeals.

A person aggrieved by a decision of the city manager or his designee under this chapter may appeal such decision to the hearing examiner by filing a written notice of appeal within 10 days of such decision. Such appeal shall be in accordance with the hearing examiner code. [Ord. 770 § 58, 1988: Ord. 532 § 8, 1981.]

18.33.130 Complaint procedures – Violation – Penalty – Additional remedies.

A violation of the provisions of this chapter shall be prosecuted on a written complaint basis; that is, a prosecution shall be initiated upon the written complaint of a citizen filed with the city clerk. Upon the filing of such written complaint, the city clerk shall notify the property owner in writing of the violation and shall give the property owner 30 days to cure the violation. Such notice shall be by certified mail. If the violation is not cured at the conclusion of such 30-day period, the city attorney shall initiate a prosecution. A violation of a provision of this chapter shall be a criminal offense. The municipal court judge shall further have jurisdiction to order the property owner to cure the violation, and if not timely cured, the property owner shall be subject to a penalty not to exceed $50.00 for each additional day of violation. [Ord. 610 § 28, 1984: Ord. 532 § 9, 1981.]

18.33.140 Pre-existing uses – Grace period.

Uses in existence on November 2, 1981, the effective date of this chapter, which are in violation of this chapter shall be permitted to exist for one year after the effective date of this chapter. No criminal prosecution shall be initiated during such grace period. The burden of proof shall be on the occupier of land to establish the facts of such pre-existing use. [Ord. 532 § 11, 1981.]

Chapter 18.36

GENERAL USE PROVISIONS, CONDITIONS, AND EXCEPTIONS

Sections

18.36.010 Regulations subject to chapter.

The foregoing regulations of this title pertaining to the several zones shall be subject to the general provisions, conditions, and exceptions contained in this chapter. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.46.010), 1964.]

18.36.020 Limitations on land use.

Except as provided in this chapter and chapters 18.40, 18.44, 18.48, and 18.52 DMMC, no building shall be erected, reconstructed, or structurally altered, nor shall any building or land be used for any purpose other than is specifically permitted in the zone in which such building or land is located. [Ord. 175 § 1(24.46.020), 1964.]

18.36.030 Individual lot or building site is unit of application.

Unless otherwise specifically stated in this title, an individual lot or building site as each is defined in this title, is intended to be the unit to which all of the provisions, requirements, permitted uses, yards, and open spaces apply. [Ord. 175 § 1(24.46.030), 1964.]

18.36.040 If only one building on a lot or building site, it constitutes a main building.

Any building which is the only building on a lot or building site is a main building unless otherwise authorized by variance. No accessory building or use is allowed on a lot or building site unless the primary use to which it is accessory exists on the same lot or building site. [Ord. 175 § 1(24.46.040), 1964.]

18.36.050 Zone of unlisted uses and clarification of ambiguity.

(1) In creating zones, the board has considered the characteristics of uses which make them comparable, compatible, or similar. The board recognizes that it is not possible to enumerate and classify every use to which land may be devoted, either now or in the future, and that ambiguity may exist with reference to the appropriate and consistent zone of a use. Therefore:

(a) When any known and identifiable use is not listed as a permissible use in any zone; or

(b) When any use has now come into existence by reason of any technical development in the trades, sciences, and equipment; or

(c) When any use already listed in the zone which, because of any process, equipment, or materials used, possesses different performance standards than those which are usually associated with the uses in the zone as presently classified and which, therefore, makes it reasonable that such a use should be placed in the more restrictive zone.

(2) It shall be the responsibility and duty of the community development department to ascertain all pertinent facts relating to any such use and make what it deems to be the appropriate recommendation for zoning. Any proceedings under this section shall be processed as an amendment. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.46.050), 1964.]

18.36.060 Potential zones.

Repealed by Ord. 969. [Ord. 175 § 1(24.46.060), 1964.]

18.36.070 Reclassification of potentially zoned areas.

Repealed by Ord. 969. [Ord. 175 § 1(24.46.070), 1964.]

18.36.080 Official signs and notices not restricted.

Repealed by Ord. 637. [Ord. 175 § 1(part), 1964.]

18.36.090 Temporary construction buildings.

Temporary structures for the housing of tools and equipment, or containing supervisory offices in connection with construction projects may be established and maintained during the progress of such construction on such projects, and shall be abated within 30 days after completion of the project, or 30 days after cessation of work. [Ord. 175 § 1(24.46.090), 1964.]

18.36.100 Temporary construction signs.

Repealed by Ord. 584. [Ord. 175 § 1(part), 1964.]

18.36.110 Temporary real estate office.

One temporary real estate sales office may be located on any new subdivision in any zone; provided, the activities of such office shall pertain only to the initial selling of property within the subdivision upon which the office is located. [Ord. 175 § 1(24.46.110), 1964.]

18.36.120 Temporary real estate signs.

Repealed by Ord. 584. [Ord. 175 § 1(part), 1964.]

18.36.130 Temporary use of trailer as residence.

After a building permit has been issued and a residence is in the process of being constructed, a trailer as defined in this title may be located upon a site for the temporary use by the owner of such property as a residence for a period of six months; provided, such trailer remains mobile; and provided further, that a permit is obtained from the building department to insure compliance with this code as to yards and to local health department requirements. In cases where substantial progress is shown on the construction of the residence and additional time is needed to complete the work, a permit may be renewed for one additional six-month period. Upon the expiration of the permit, the use of the trailer as a residence shall be discontinued. [Ord. 175 § 1(24.46.130), 1964.]

18.36.140 Public utilities – Distribution.

(1) The provisions of this title shall not be construed to limit or interfere with the installation, maintenance, and operation of streets, public utility pipelines, electric or telephone transmission and distribution lines, poles, towers, and appurtenances or railroads (but not including switching yards or roundhouses) when located within the rights-of-way, easements, franchises, ownerships, or license rights of such public utilities.

(2) The minimum lot area and frontage provisions of this title shall not apply to public utility sites; the area and frontage need only be such as will accommodate the facilities in compliance with all other requirements in this title. [Ord. 175 § 1(24.46.140), 1964.]

18.36.150 Family day care providers.

A family day care provider home facility is a permitted use in all zones, subject to the following conditions:

(1) The family day care provider is currently licensed by the state of Washington Department of Social and Health Services and adheres to all licensing standards;

(2) The family day care provider is currently licensed under chapter 5.04 DMMC;

(3) Family day care services are provided in a residential dwelling exclusively in the family living quarters;

(4) The structure in which family day care services are provided complies with all building, fire, safety, and health codes;

(5) Signs identifying the residence as a family day care provider are prohibited;

(6) The Washington State Department of Social and Health Services certifies that there are adequate child drop-off and pick-up areas;

(7) Hours of operation are limited to 6:00 a.m. to 9:00 p.m.; and

(8) Prior to state licensing, the family day care provider provides written notification to the immediately adjoining property owners of the provider of the intent to locate and maintain the facility in order to provide the Washington State Department of Social and Health Services an opportunity to provide a forum to resolve any dispute. [Ord. 1106 § 6, 1994.]

Chapter 18.38

NOISE LEVELS[1]

Sections

18.38.010 Definitions.

(1) Use of Words and Phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) "Residential neighborhood" means all land within the city designated "residential" or "R-SE" in the official zoning map of the city, including single-family residential, RA, multifamily residential, and R-SE. [Ord. 1237 §§ 2, 4, 1999; Ord. 1197 § 28, 1997; Ord. 1127 § 1, 1995.]

18.38.020 Limit on noise impacts on residential neighborhoods.

Residential neighborhoods shall not be subject to adverse land uses, activities or traffic that generate exterior noise exposure levels exceeding 55 L_{dn} dBA, or existing levels as of April 20, 1995, whichever is greater. A reduction in the exterior noise level (greater than 55 L_{dn}) that existed as of April 20, 1995 shall become the new maximum exterior noise level. [Ord. 1127 § 2, 1995.]

18.38.030 Requirement for noise mitigation plan.

Proponents of projects that will increase exterior noise levels to which residential areas are exposed to levels exceeding those existing on April 20, 1995, or to levels exceeding an L_{dn} of 55 dBA, whichever is greater, must submit a noise mitigation plan to the community development department of the city for review

1. The provisions on trash container screening, originally codified in this chapter, have been recodified as DMMC 18.41.500 – 18.41.550. See also chapters 7.16 and 7.36 DMMC.

and approval before required permits are issued to allow the project to proceed. [Ord. 1127 § 3, 1995.]

Chapter 18.40

HEIGHT, YARDS, AREA, AND OPEN SPACES – GENERAL PROVISIONS

Sections

18.40.010 Regulations subject to chapter.

The foregoing regulations of this title shall be subject to the general provisions, conditions, and exceptions contained in this chapter. [Ord. 175 § 1(24.48.010), 1964.]

18.40.020 Height of buildings on through lots.

On through lots divided by a zone boundary line, the line shall be considered a property boundary line for purposes of determining the permitted height on the building site. [Ord. 175 § 1(24.48.020), 1964.]

18.40.030 Height of structures and roof structures.

Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans, or similar equipment required to operate and maintain the building, fire or parapet walls, skylights, flagpoles, chimneys, smokestacks, church steeples and belfries, utility line towers and poles, and similar structures may be erected above the height limits of this title; provided, however, no penthouse or roof structure or any other space above the height limit prescribed for the zone in which the building or structure is located shall be allowed for the purpose of providing additional floor space; provided further, that rooftop gardens and patios are not classified as additional floor space for the purpose of this section. [Ord. 1514 § 8, 2011: Ord. 445 § 6, 1978: Ord. 175 § 1(24.48.030), 1964.]

18.40.035 Construction on artificial grades.

The height of any structure constructed on an artificial grade shall be measured from existing grade, as defined in DMMC 14.60.030, in accordance with the formula contained in DMMC 18.04.320. The decision as to whether a grade is artificial shall be made by the building department, subject to appeal to the hearing examiner in accordance with the hearing examiner code, and shall be based on the intent of the developer as professionally perceived by the building department. No grade shall be deemed artificial if, in the professional opinion of the building department, the change of grade is necessary for development of the property on the basis of sound engineering principles and customary construction practices in the area. [Ord. 801 § 2, 1989: Ord. 564 § 2, 1983.]

18.40.040 Yards and open spaces.

Except as may be otherwise provided in this title, every required yard and open space shall be open and unobstructed from the ground to the sky. No yard or open space provided around any building for the purpose of complying with the provisions of this title shall be considered as providing a yard or open space for any other building, and no yard or open space on any lot or parcel shall be considered as providing a yard or open space on an adjoining lot or parcel whereon a building is to be erected. [Ord. 175 § 1(24.48.040), 1964.]

18.40.050 Greater yard and open space requirements include minimum requirements.

Wherever in this title a particular use, or a building in connection with a particular use, is specifically required to maintain a distance from any boundary property line or other building or buildings on the site greater than the minimum standard required yard or open space set forth for the zone, such greater distance is intended to apply only to the particular building, buildings, or use involved and the standard required minimum yards and open spaces required for the zone (if any) shall be included as a part of the greater required distance or open space for the specified building, buildings, or use. [Ord. 175 § 1(24.48.050), 1964.]

18.40.060 Modification or adjustment of side yard requirements on consolidated lots or oversize building sites.

When the common property line separating two contiguous lots is covered by a building or permitted group of buildings, such lots shall constitute a single building site and the yard spaces required by this title shall then not apply to such common property line. [Ord. 175 § 1(24.48.060), 1964.]

18.40.070 Yard requirements when more than one main building exists.

Where two or more buildings are, by definition of this title, considered to be main buildings, then the front yard requirements shall apply only to the building closest to the lot front line. [Ord. 175 § 1(24.48.070), 1964.]

18.40.080 Method for determining modification of required front yard on steep lots.

On any lot where the natural gradient or slopes, as measured from the lot front line along the centerline for the lot for a distance of 60 feet is in excess of 35 percent, then the required front yard may be reduced one foot for each one percent of gradient or slope in excess of 35 percent. [Ord. 175 § 1(24.48.020), 1964.]

18.40.090 Modification of required front yards where nonconformities exist.

(1) The depth of required front yards on unimproved lots may be modified when any of the following circumstances apply:

(a) When the unimproved lot or lots are located between lots having nonconforming front yards;

(b) When the unimproved lot or lots are located between a lot having a nonconforming front yard and a lot having a conforming front yard;

(c) When the unimproved lot or lots are located between a lot having a nonconforming front yard and a vacant corner lot; and

(d) Where a vacant corner lot or reverse corner lot adjoins a lot having a nonconforming front yard.

(2) A nonconforming front yard shall be deemed to be an area between the lot front line and the portion of the main building closest to it, which area is less in depth than that defined by this title as constituting a required front yard. On a lot having a nonconforming front yard the degree of nonconformity to be credited in making the adjustment shall in no instance exceed 60 percent of the front yard depth required on the nonconforming lot, such percentage to be measured from the rear line of the required front yard on such lot toward the lot front line.

(3) The rear line of the modified front yard on the unimproved lot or lots as referred to in subsection (2) of this section shall be established in the following manner:

(a) On lots having nonconforming front yards a point shall be established at the intersection of the line determining the depth of the lot with a line coincident with the front of the building causing the nonconforming conditions;

(b) On lots having conforming front yards or on a vacant corner lot, a point shall be established at the intersection of the line determining the depth of the lot with the rear line of the required front yard;

(c) A straight line shall be drawn from such point of intersection on the lot with the nonconforming front yard across any intervening unimproved lot or lots to a point established on the next lot in either direction as set forth in paragraphs (a) and (b) above; and

(d) The depth of the modified front yard on any lot traversed by the straight line defined in paragraph (c) of this subsection shall be established by the point where the straight line intersects the line constituting the depth of each such intervening lot.

(4) When an unimproved corner lot or reverse corner lot adjoins a lot having a nonconforming front yard, the front yard on the corner lot or reverse corner lot may be the same as that on the adjoining lot; provided, the placement of the buildings does not interfere with the required vision clearance at the corner formed by the intersection of the streets. [Ord. 175 § 1(24.48.090), 1964.]

18.40.100 Yard requirements for property abutting half-streets or streets designated by official control.

(1) A building or structure shall not be erected on a lot which abuts a street having only a portion of its required width dedicated and where no part of such dedication would normally revert to the lot if the street were vacated, unless the yards provided and maintained in connection with such building or structure have a width or depth of that portion of the lot needed to complete the road width plus the width or depth of the yards required on the lot by this title, if any. This section applies to all zones.

(2) Where an official control adopted pursuant to law includes plans for the widening of existing streets, the connecting of existing streets, or the establishment of new streets, the placement of buildings and the maintenance of yards, where required by this title, shall be measured from the future street boundaries as determined by such official control. [Ord. 175 § 1(24.48.100), 1964.]

18.40.110 Measurement of front yards.

Front yard requirements shall be measured from the property front line or the indicated edge of a street for which an official control exists, except as provided in DMMC 18.40.100. [Ord. 175 § 1(24.48.110), 1964.]

18.40.120 Vision clearance – Corner and reverse corner lots.

All corner lots and reverse corner lots subject to yard requirements shall maintain for safety vision purposes a triangular area, one angle of which shall be formed by the lot front line and the side line separating the lot from the street, and the sides of the triangle forming the corner angle shall each be 15 feet in length measured from the aforementioned angle. The third side of the triangle shall be a straight line connecting the last two mentioned points which are distant 15 feet from the intersection of the lot front and side lines. Within the area comprising the triangle no tree, fence, shrub, or other physical obstruction higher than 42 inches above the established grade shall be permitted. [Ord. 175 § 1(24.48.120), 1964.]

18.40.130 Permitted intrusions into required yards.

The following may project into required yards:

(1) Fireplace structures not wider than eight feet measured in the general direction of the wall of which it is a part – 18 inches into any yard;

(2) Uncovered porches and platforms which do not extend above the floor level of the first floor – 18 inches into side yards and six feet into the front yard; provided, they may extend three feet into the side yard when they do not exceed 18 inches in height above the finished grade; and

(3) Planting boxes or masonry planters not exceeding 42 inches in height in any required front yard. [Ord. 175 § 1(24.48.130), 1964.]

18.40.140 Location of swimming pools.

In any zone, a swimming pool may not be located in any required front yard, nor closer than five feet to any property line or to any building on the same premises. [Ord. 175 § 1(24.48.140), 1964.]

18.40.150 Location and height of wall, fence, or hedge.

In any residential zone a wall, fence, or hedge is permitted under the following conditions:

(1) Where a fence is installed directly on the ground, the height of the fence shall be the vertical distance from the top board, rail, or wire to the ground directly below the fence; where a masonry or stone wall is used as a fence, the height shall be the vertical distance from the top surface of the wall to the ground on the high side of the wall;

(2) A wall, fence, or hedge not more than 42 inches in height may be permitted on any part of a lot that is not otherwise restricted;

(3) On all residential lots, either partially or fully view-obscuring walls, fences, or hedges not exceeding six feet in height shall be permitted on any lot line; except that any wall, fence, or hedge greater than 42 inches in height and located within the required front yard and side yard adjacent to a street shall be constructed of wrought iron, chain link, or similar

materials that, as a whole, shall not be greater than 20 percent view obscuring or, if other materials are used that are greater than 20 percent view obscuring, the property owner shall first obtain approval from the city traffic engineer to ensure that safe sight distance is maintained and a traffic hazard shall not be created;

(4) Where a retaining wall protecting a cut below the natural grade is located on the line separating lots or parcels, such retaining wall may be topped by a fence, wall, or hedge of the same height that would otherwise be permitted at the location if no retaining wall existed, and the top of the retaining wall shall be considered the bottom of the fence;

(5) Where a retaining wall contains a fill, the height of the retaining wall built to retain the fill shall be considered as contributing to the permissible height of a wall, fence, or hedge, and shall be measured from the ground on the low side; provided, that in any event a protective fence not more than 42 inches in height may be erected at the top of the retaining wall and any portion of such fence above the six-foot maximum height shall be no greater than 50 percent view obscuring;

(6) Electric fences shall not be permitted in any residential zone;

(7) No fence shall be located in any public right-of-way, unless a right-of-way permit is obtained from the city;

(8) Any fence exceeding a height of six feet, and any retaining wall exceeding a height of 48 inches, shall require the property owner to obtain a building permit; the provisions and conditions of this section shall not apply to fences required by state law to surround and enclose public utility installations, or to chain link fences enclosing school grounds and public playgrounds. [Ord. 1543 § 3, 2012: Ord. 1237 § 4, 1999; Ord. 175 § 1(24.48.150), 1964.]

18.40.160 Required increase of side yard where multiple or row dwellings front upon a side yard.

The minimum width of the side yard upon which multiple or row dwellings front shall be not less than 10 feet. Open, unenclosed porches not extending above the floor level of the first floor may project a distance of not more than three feet into the side yard upon which such dwellings front. [Ord. 175 § 1(24.48.160), 1964.]

18.40.170 Required increase of side yard where multiple or row dwellings rear upon a side yard.

Where multiple or row dwellings are arranged so that the rear of such dwellings abuts upon a side yard, and such dwellings have openings onto such side yard used as secondary means of access to such dwellings, the required side yard to the rear of such dwellings shall be increased by one foot for each opening onto such side yard. [Ord. 175 § 1(24.48.170), 1964.]

18.40.180 Yard requirements on through lots.

(1) If a through lot is improved as one building site, the main building shall conform to the requirements of the zone of the frontage occupied by such main building, and in residential zones no accessory building shall be located closer to either street than the distance constituting the required front yard on such street, and required side yards shall extend the full depth of the lot.

(2) If a through lot is divided by a zone boundary line, the line shall be considered a property boundary line for purposes of determining the required yards and open spaces. [Ord. 1237 § 4, 1999; Ord. 175 § 1(24.48.180), 1964.]

18.40.190 Lot area not to be reduced.

The lot area of any lot recorded prior to August 3, 1964, shall not be so reduced or diminished that the area, width, yards, or other

open spaces shall be less than prescribed by this title for the zone in which the property is located, nor shall the number of dwelling units be increased in any manner except in conformity with the regulations established by this title. In multiple lot subdivisions recorded subsequent to August 3, 1964, the minimum lot area requirement for each lot in the subdivision shall be deemed to have been conformed to if the average lot areas for all lots in the subdivision meet the minimum requirements set forth in the zone applying to the property. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.48.190), 1964.]

18.40.200 Dividing an improved building site area prohibited.

When a single lot or parcel contains twice the minimum required lot area or more for the zone in which it is located, and the total area of the site has been used to compute the number of dwelling units to be located thereon, the building or buildings which contain dwelling units shall be so located on the property as to cover, at least in part, any line that would represent a property line between two or more parcels that could result from an otherwise legal division of the original lot or parcel, and thereafter no property shall be alienated from the building site which would reduce the total required area of the site upon which the number of dwelling units located thereon was based. [Ord. 175 § 1(24.48.200), 1964.]

18.40.210 Greater yards and open spaces not to be alienated.

Where a greater height of buildings has been accomplished by reason of providing increased yards or open spaces, no property may be alienated from the lot or building site which would reduce the yards or open spaces provided to compensate for the greater height of the building, nor which would reduce the total required minimum area of the site upon which area the permitted floor space contained in such building was based. [Ord. 175 § 1(24.48.210), 1964.]

18.40.220 Greater lot area may be required.

Greater lot areas than those prescribed in the various zones may be required when such greater areas are established by the adoption of a planned unit development as provided in this title. [Ord. 175 § 1(24.48.220), 1964.]

18.40.230 Substandard or nonconforming lots in single-family residential zones.

In any single-family residential zone, a single-family dwelling may be established on a lot which cannot satisfy the lot area requirements of the zone; provided: (1) that all other bulk regulations shall apply, and (2) that the owner of such nonconforming lot does not own any adjoining vacant lots of record of continuous boundary to which the nonconforming or substandard lot can be merged in title or with which the lot lines can be adjusted to create lots of record which satisfy the lot area requirements of the zone or create a lot of record of greater area, and (3) that the owner of such nonconforming lot or lots has not received a fee interest in such lot or lots from a party who at any time subsequent to April 25, 1988 held a fee interest in any adjoining lot of continuous boundary; and further provided, that limitation (3) above shall not apply to a party who either (A) acquires a fee interest by enforcement of a security interest in such property where the security interest was created prior to April 25, 1988, or (B) has acquired such fee interest as the result of a judicial decree of partition by a court of competent jurisdiction. [Ord. 756 § 1, 1988.]

18.40.240 Substandard lots may be combined.

In an RA or multifamily residential zone two or more substandard lots or fractions of lots, or a standard lot and substandard lot or fraction of lots may be consolidated into a single building site; provided, the total area of such consolidated lots is less than twice the required minimum lot area of the zone in which the property is located. In an RA or multifamily residential zone a single building, which complies with the requirements of the

zone in which it is located, may be erected on such consolidated site containing as many dwelling units as would be permitted if each substandard lot or fraction of a lot were improved individually. No portion of the consolidated building site shall thereafter be alienated which would reduce the area upon which the number of dwelling units allowed thereon was based. [Ord. 1237 § 4, 1999; Ord. 1197 § 29, 1997; Ord. 231 § 1, 1968: Ord. 175 § 1(24.48.240), 1964.]

18.40.250 Use of lots or parcels containing more than minimum required lot area.

When a lot contains two or more times the minimum lot area required for the zone in which the lot is located, and the owner desires to use each unit of area equivalent to the minimum lot area as a separate building site; provided, not more than four such units result, and no dedication of streets, alleys, or other public ways are involved, such area units may be so utilized only after approval of the lot division as prescribed in the subdivision code (Title 17 DMMC). When such units are thus defined, then all of the provisions of this title governing the use of a lot in the zone in which such property is located shall apply thereto. [Ord. 175 § 1(24.48.250), 1964.]

18.40.260 Dangerous fences – Restrictions.

Dangerous fences are subject to the following restrictions:

(1) Fences containing razor wire, coiled barbed wire, or material(s) of similar design are prohibited in all residential zones, except that the community development director may approve such dangerous fences in residential zones for jails, detention facilities and other methods of court-ordered personal confinement, through the building permit process. Only those fences to be used for the purposes set forth in this subsection will be allowed under such permit.

(2) Electric fences are not permitted in the city except when used to contain grazing animals in an area zoned to allow such a use. Electric fences must be set back at least five feet from the property line or must be enclosed by additional fencing or other barriers which prevent access to the electric fence by small children on the adjacent property.

(3) A barbed wire fence may be a maximum of five feet in height and may contain four strands of taut parallel barbed wire.

(4) A fence or wall may incorporate a maximum of three strands of parallel barbed wire a maximum of two feet in height on top of the fence, so long as the orientation is either straight up or angled in toward the site. If such a fence contains three strands of barbed wire which are oriented outward from the site, the fence shall be set back from the property line a distance of one to 10 feet as determined by the community development director, based on the following criteria:

(a) The proximity of the fence to existing or planned sidewalks, pedestrian ways, or public parking areas;

(b) Whether the security needs for the property can be satisfied;

(c) Whether the location of the fence will degrade the aesthetics of the surrounding area;

(d) Whether the fence location is in the best interest of the health, safety and welfare of the general public;

(e) Whether either required landscaping can be fulfilled, or landscaping is otherwise provided to ameliorate visual impacts of the fence;

(f) The proximity of the fence to environmentally sensitive areas, open space, or other such areas likely to provide habitat for urban mammals.

(5) In residential zones, all permitted dangerous fences shall comply with height and setback restrictions for all fences as set forth in DMMC 18.40.150. For properties where both codes apply, the more restrictive code shall prevail.

(6) All fences not in compliance with this section shall, within 60 days of notification from the city, be removed by the owner or, upon failure to remove the fence, the community development director is empowered to cause the removal of the fence, the cost of which shall be billed to the owner. [Ord. 1315 § 2, 2003.]

Chapter 18.41

LANDSCAPING AND SCREENING[1]

Sections

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1. Code reviser's note: § 3B of Ord. 594 (screening requirements for trash containers) was originally codified as DMMC 18.41.030(2). Those provisions were deleted by Ord. 937.

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ARTICLE I. GENERAL PROVISIONS

18.41.010 Purpose.

The purposes of the landscaping and screening requirements of this chapter are to increase compatibility between different intensities of land uses, by providing visual barriers, visually interrupting the barren expanse of paved parking lots, screening undesirable views which have a blighting impact on surrounding properties, and providing a visual separation and physical buffer between varying intensities of abutting land uses; to implement the comprehensive plan; to encourage the retention of significant existing vegetation to the extent feasible; to reduce erosion and water runoff; to conserve energy; to preserve and promote urban wildlife habitats; to minimize impacts of noise, light, and glare; and to aid in regulating vehicular circulation. [Ord. 594 § 1, 1984.]

18.41.020 Applicability – Plan requirements.

(1) General Applicability. Landscaping required pursuant to this chapter shall be installed throughout the entire building site in accordance with an approved site plan, prior to issuance of the certificate of occupancy or business license for any of the following development activities:

(a) Construction of a new building or structure;

(b) Expansion of an existing building or structure where such expansion contains 20 percent or more of the floor area of the existing building or structure;

(c) Creation or expansion of a parking area or other paved surface; and

(d) Creation or expansion of an outdoor use, activity, or storage area.

(2) Exceptions. The provisions of this chapter shall not apply in the following circumstances:

(a) Single-family residential development activities shall not be subject to the provisions of this chapter except as may be specifically required by any section.

(b) Where the community development department determines that existing structures are situated so as to preclude installation of required landscaping, such required landscaping shall be waived for the area affected by such structures.

(c) Where compliance with the provisions of chapter 18.44 DMMC, loading areas and off-street parking requirements for existing buildings or structures conflicts with the requirements of this chapter, the required landscaping shall be waived, or modified in accordance with DMMC 18.41.380.

(d) The irrigation requirements of DMMC 18.41.060 shall apply only to construction of a new building or structure or expansion of an existing building or structure.

(3) Nothing in this chapter shall be construed to relieve the applicant of open space, buffer, setback, and other such development constraints defined by the zoning code, conditional use permit, unclassified use permit, concomitant rezone agreement, subdivision code, planned unit development, shorelines master program, and terms of approvals associated therewith.

(4) Plan Requirements. The community development department shall review and may approve, approve with modifications, or disapprove site landscape development plans for all development activities subject to the provisions of this chapter. A landscaping plan shall be submitted to the community development department accurately drawn using an appropriate engineering or architectural scale which shows the following:

(a) Boundaries and dimensions of the site;

(b) Location and identification of all streets, alleys, sidewalks, and easements abutting the site, including dimensions;

(c) Proposed topography at a maximum of five-foot contours;

(d) Proposed location and dimensions of all on-site buildings including height of structures and distance between buildings;

(e) Details of any proposed architectural barriers;

(f) Dimensions and location of storage and trash areas, loading docks, exterior utility installations, and mechanical equipment;

(g) Layout and dimensions of all parking stalls, easements, access ways, turnaround areas, driveways, and sidewalks on site;

(h) Percentage of landscaping for total site and net square footage of parcel;

(i) Proposed landscaping including location, species, and size at time of planting;

(j) Existing vegetation in general, and identifying all evergreen trees six inches DBH (diameter at breast height) or greater and all deciduous trees eight inches DBH or greater;

(k) Irrigation plan, indicating the location of pipes, sprinkler heads and pumps, pipe size, head capacity, water pressure in pounds per square inch at the pump and sprinkler heads, and timer system. [Ord. 937 § 1, 1992: Ord. 594 § 2, 1984.]

ARTICLE II. GENERAL LANDSCAPING REQUIREMENTS[1]

18.41.030 Required – All zones.

Landscaping shall be provided in all developments subject to this chapter as set forth below. Where the width of a required planting strip exceeds the setback requirement for any structure subject to this chapter, the setback shall be increased to provide the full width of planting strip unless otherwise modified in accordance with DMMC 18.41.380. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(part), 1984.]

18.41.040 Storage areas.

All outside storage areas and loading docks shall be screened by fencing and a Type III landscaping strip with a minimum depth of five feet unless determined by design review that such screening is not necessary because stored materials are not visually obtrusive. The five-foot deep landscaped area may occur within the street right-of-way abutting the property line upon approval of the community development department. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(A), 1984.]

18.41.050 Use of nonvegetative material.

Bark, mulch, gravel, or other nonvegetative material shall only be used in conjunction with landscaping to assist vegetative growth and maintenance or to visually complement plant material. Nonvegetative material is not a substitute for plant material. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(C), 1984.]

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1. Code reviser's note: DMMC 18.41.030 – 18.41.190 are former DMMC 18.41.030.

18.41.060 Irrigation.

All landscape areas shall be irrigated by a permanent, underground sprinkler or drip watering system complete with automatic controls. [Ord. 937 § 2(part), 1992.]

18.41.070 Drainage.

Required landscaped areas shall be provided with adequate drainage. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(D), 1984.]

18.41.080 Slopes.

Slopes shall not exceed a 3:1 ratio (length to height) in order to decrease erosion potential and assist in ease of maintenance. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(E), 1984.]

18.41.090 Tree retention.

(1) All existing healthy evergreen trees six inches DBH (diameter at breast height) or greater and all existing healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches DBH or greater, shall be retained to the extent feasible within landscape areas. The community development department shall designate trees to be retained prior to issuance of a land clearing, grading, and filling permit.

(2) All clearing and grading shall take place outside the drip line of those trees to be retained; provided, that the community development department may approve hand clearing within the drip line if it can be demonstrated that such grading can occur without damaging the tree. If the roots are damaged, the community development department may require restoration measures such as the application of phosphate or potash.

(3) Any tree identified to be retained that is destroyed or damaged during construction shall be replaced by the applicant with five trees on the subject property or within a street planting strip near the subject property. Replacement trees shall be a minimum size of eight feet in height for evergreen trees, and two inches in caliper for deciduous, and shall be approved by the community development department. The community development department may approve smaller trees if he/she determines they are of specimen quality. These trees shall be provided in addition to any street trees required under chapter 12.28 DMMC. The exact type and location of street trees shall be determined by the community development department. [Ord. 937 § 2(part), 1992.]

18.41.100 Microclimate.

Proposed landscaping shall reflect consideration of microclimate of the site and surrounding properties, by manipulation of sun, shade, and wind for increased energy efficiency of the development and for maximum comfort of the users of the site. Use of indigenous plant materials shall be preferred. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(F), 1984.]

18.41.110 Scenic view preservation.

Landscaping shall be designed, installed, and thereinafter maintained in such a manner which preserves scenic views and vistas of neighborhood and upland properties. Under no circumstances shall species of trees be planted which by virtue of their height and/or breadth at maturity impinge upon the views of other properties. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(G), 1984.]

18.41.120 Landscaping adjacent to freeways.

A Type II landscaping strip with a minimum width of 25 feet and containing an earthen berm with a minimum height of five feet shall be provided adjacent to freeways within all zones except single-family residential and R-SE zones. A portion of the 25-foot strip may be partially located in the freeway right-of-way if permitted by the Washington State Department of Transportation and approved by the community development department. [Ord. 1237 §§ 2, 4, 1999; Ord. 937 § 2(part), 1992: Ord. 594 § 3(H), 1984.]

18.41.130 Landscaping adjacent to single-family residential and R-SE zones.

Care shall be exercised in the design of buffering landscaping and in the placement of trees adjacent to single-family residential or R-SE zoned properties in order to minimize

maintenance problems stemming from branches overhanging property lines when such trees reach maturity. It shall be the responsibility of the property owner to remove or trim boughs which overhang onto single-family residential and R-SE zoned properties when maintenance problems arise for the owner of the single-family residential or R-SE zoned property. [Ord. 1237 §§ 2, 4, 1999; Ord. 937 § 2(part), 1992: Ord. 594 § 3(I), 1984.]

18.41.140 Unused portions of building sites.

All portions of a building site not devoted to a building, future building, parking, storage, or accessory uses shall be landscaped in a manner appropriate to the stated purposes of this chapter. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(J), 1984.]

18.41.150 Landscaping adjacent to required fencing.

Landscaping shall be placed outside of sight-obscuring or 100 percent sight-obscuring fences unless determined by the community development department that such arrangement would be detrimental to the stated purpose of this chapter. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(K), 1984.]

18.41.160 Setback from street lights, fire hydrants, and public works.

No tree, as measured from its center, shall be located within 10 feet of street light standard, or within five feet of a fire hydrant. Tree species whose roots are known to cause damage to public roadways or other public works shall not be planted closer than 10 feet to such public works unless the tree root system is completely contained within a barrier being a minimum of five feet deep and five feet wide. Tree species with water seeking roots are prohibited within and adjacent to rights-of-way. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(L), 1984.]

18.41.170 Driveway and street intersections.

To insure that landscape materials do not constitute a safety hazard, such materials shall not be located in conflict with the sight areas at intersections established by chapter 12.08 DMMC. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(M), 1984.]

18.41.180 Curbing.

In order to protect the landscaping materials planted and to insure proper growth, all planter areas shall be separated from parking areas and streets by vertical curbing. Curbing shall be of Portland cement or as approved by the public works director. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(N), 1984.]

18.41.190 Maintenance.

The property owner shall be responsible for the maintenance of all landscaping required pursuant to this section, including any landscaping within a right-of-way, abutting the subject property. Such landscaping shall be maintained in good condition so as to present a neat and orderly appearance; shall be kept free from refuse and debris; living landscape material shall be kept alive and in a healthy condition; and in such a manner as to accomplish the purpose for which it was initially required. [Ord. 937 § 2(part), 1992: Ord. 594 § 3(O), 1984.]

ARTICLE III. LANDSCAPING REGULATIONS BY ZONE[1]

18.41.200 Single-family residential and R-SE zones.

(1) In all subdivisions and planned unit developments (PUDs) a minimum 10-foot Type II landscaping strip shall be provided along all property lines abutting arterial streets.

(2) In all planned unit developments:

(a) A minimum 10-foot Type I landscaping strip between residential and commercial uses shall be provided;

(b) A Type II landscaping strip an average of 10 feet but not less than seven feet in depth shall be provided between single-family residential and multifamily residential areas;

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1. Code reviser's note: DMMC 18.41.200 – 18.41.310 are former DMMC 18.41.040.

(c) Parking facilities in planned unit developments shall be landscaped as prescribed in DMMC 18.41.320. [Ord. 1237 §§ 2, 4, 1999; Ord. 594 § 4(A), 1984.]

18.41.210 Attached townhouse and duplex residential, RA-3,600 zone.

(1) A minimum 10-foot Type III landscaping strip shall be provided along all property lines abutting public rights-of-way excluding alleys.

(2) A minimum 10-foot Type II landscaping strip shall be provided along all property lines abutting a residential zone.

(3) Within a townhouse development, the following landscaping requirements shall apply:

(a) A minimum 10-foot Type III landscaping strip shall be provided along all perimeter property lines abutting public rights-of-way excluding alleys.

(b) A minimum five-foot Type II landscaping strip shall be provided along all perimeter side and rear property lines.

(c) Parking facilities in townhouse developments shall be landscaped as prescribed in DMMC 18.41.320 (Landscaping of parking facilities). [Ord. 1197 § 12, 1997; Ord. 594 § 4(B), 1984.]

18.41.220 Multifamily residential, RM-2,400 zone.

(1) A minimum 10-foot Type III landscaping strip shall be provided along all property lines abutting public rights-of-way excluding alleys.

(2) A minimum 10-foot Type II landscaping strip shall be provided along all property lines abutting single-family residential or R-SE zoned properties.

(3) A minimum five-foot Type II landscaping strip shall be provided along all property lines abutting RA or multifamily residential zoned properties.

(4) Parking facilities landscaping as prescribed in DMMC 18.41.320. [Ord. 1237 § 4, 1999; Ord. 1197 § 30, 1997; Ord. 594 § 4(C), 1984.]

18.41.230 Multifamily residential, RM-1,800, RM-900, RM-900A zones.

(1) A minimum five-foot Type III landscaping strip shall be provided along all property lines abutting public rights-of-way.

(2) A minimum 10-foot Type II landscaping strip shall be provided along all property lines abutting single-family residential or R-SE zoned properties.

(3) A minimum five-foot Type II landscaping strip shall be provided along all property lines abutting RA or multifamily residential zoned properties.

(4) Parking facilities landscaping as prescribed in DMMC 18.41.320. [Ord. 1237 §§ 2, 4, 1999; Ord. 1197 § 31, 1997; Ord. 594 § 4(D), 1984.]

18.41.240 Restricted service, RM-900B zone.

(1) The perimeter of property abutting a residential zone shall provide a Type I landscaping strip to a minimum depth of 10 feet.

(2) A Type III landscaping strip not less than five feet in depth shall be provided along all property lines abutting public rights-of-way excluding alleys.

(3) A Type II landscaping strip not less than five feet in depth shall be provided along all property lines adjacent to other RM-900B zones and public or institutional uses.

(4) Parking facilities landscaping as prescribed in DMMC 18.41.320. [Ord. 1237 § 3, 1999; Ord. 887 § 16, 1991: Ord. 594 § 4(E), 1984.]

18.41.250 Neighborhood commercial, N-C zone.

(1) The perimeter of properties abutting a residential zone or public or institutional uses shall provide a Type I landscaping strip to minimum depth of 10 feet.

(2) A Type III landscaping strip an average of five feet but not less than three feet in depth shall be provided along all property lines abutting public rights-of-way excluding alleys.

(3) Parking facilities landscaping as prescribed in DMMC 18.41.320. [Ord. 1237 § 2, 1999; Ord. 594 § 4(F), 1984.]

18.41.260 Business commercial, B-C zone.

(1) The perimeter of properties adjacent to a residential zone or public or institutional use shall provide a Type I landscaping strip with a minimum depth of 10 feet.

(2) A Type III landscaping strip, an average of five feet but not less than three feet in depth, shall be provided along all property lines abutting public rights-of-way excluding alleys. When the building setback from a public right-of-way is 10 feet or when such setback is utilized as a public open space plaza not accommodating parking, no perimeter landscaping strip shall be permitted but street trees set forth in DMMC 18.41.360 shall be provided within tree planters. Such tree planters shall have a minimum interior dimension of three and one-half feet and be protected by a cast iron grate.

(3) Parking facilities landscaping as prescribed in DMMC 18.41.320. [Ord. 1237 § 2, 1999; Ord. 1170 § 7, 1996; Ord. 697 § 13(A), 1987; Ord. 696 § 3(A), 1987; Ord. 594 § 4(G), 1984.]

18.41.270 Community commercial, C-C zone.

(1) The perimeter of properties adjacent to a residential zone or public or institutional use shall provide a Type I landscaping strip with a minimum depth of 10 feet.

(2) A Type III landscaping strip, an average of five feet but not less than three feet in depth, shall be provided along all property lines abutting public rights-of-way excluding alleys. When the building setback from a public right-of-way is 10 feet or when such setback is utilized as a public open space plaza not accommodating parking, no perimeter landscaping strip shall be permitted but street trees as set forth in DMMC 18.41.360 shall be provided within tree planters. Such tree planters shall have a minimum interior dimension of three and one-half feet and be protected by a cast iron grate.

(3) Parking facilities landscaping as prescribed in DMMC 18.41.320. [Ord. 697 § 13(B), 1987: Ord. 696 § 3(B), 1987.]

18.41.275 Downtown commercial, D-C zone.

(1) Where a lot line abuts or is across a right-of-way from a residential zone or a public or institutional use, a Type II landscaping strip with a minimum depth of five feet shall be provided.

(2) For automobile-oriented uses such as automobile repair shops, carwashes, drive-through facilities, and motor vehicle fuel sales, a type III landscape strip not less than three feet in depth, shall be provided along all property lines abutting public right-of-way excluding alleys. When the building setback from the public right-of-way does not exceed 10 feet or when such setback is utilized as a public open space plaza not accompanying parking, no perimeter landscaping is required but street trees as set forth in DMMC 18.41.360 shall be provided within tree planters.

(3) Parking facilities landscaping as prescribed in DMMC 18.41.320.

(4) The community development director may waive or modify the landscaping requirements of this section where substantial landscaping exists within the adjacent right-of-way and no adverse impact would result. [Ord. 1104 § 7, 1994.]

18.41.280 General commercial, C-G zone.

(1) The perimeter of properties adjacent to a residential zone or public or institutional use shall provide a Type I landscaping strip with a minimum depth of 10 feet.

(2) A Type III landscaping strip, an average of five feet but not less than three feet in depth, shall be provided along all property lines abutting public rights-of-way excluding alleys.

(3) Parking facilities landscaping as prescribed in DMMC 18.41.320. [Ord. 1170 § 7, 1996; Ord. 705 § 3, 1987; Ord. 594 § 4(H), 1984.]

18.41.290 Highway commercial, H-C zone.

(1) The perimeter of properties adjacent to residential zone or public or institutional uses shall provide a Type I landscaping strip a minimum depth of 10 feet.

(2) A Type III landscaping strip an average of five feet in depth but not less than three feet shall be provided along all property lines abutting public rights-of-way, excluding alleys.

(3) Parking facilities landscaping as prescribed in DMMC 18.41.320. [Ord. 667 § 2, 1986.]

18.41.300 Public or institutional uses.

Public or institutional uses, including churches, commercial or noncommercial recreation facilities (e.g., country clubs, golf courses, tennis courts, yacht clubs), community clubs, schools, charitable and fraternal organizations, hospitals, public utility facilities, sewage transfer plants, governmental facilities, museums, libraries, fire stations, retirement homes, nursing homes, and similar uses shall provide the following:

(1) A Type I planting strip not less than 10 feet in depth shall be provided along all property lines abutting a residential zone unless waived by the residential property owner.

(2) A Type III planting strip not less than 10 feet in depth shall be provided along all property lines abutting public rights-of-way excluding alleys. The community development director may waive or modify this requirement for properties within the downtown commercial (D-C) zone when no adverse impact would result.

(3) Landscaping of parking facilities as prescribed in DMMC 18.41.320. [Ord. 1104 § 8, 1994: Ord. 594 § 4(I), 1984.]

18.41.310 Business park, B-P zone.

(1) The perimeter of any business park building site adjacent to a residential use shall provide a Type I landscaping strip with a minimum depth of 20 feet. Within the landscaping strip, native vegetation shall be retained to the maximum extent feasible to provide as much visual screening as possible.

(2) A Type I landscaping strip, an average of at least 20 feet in depth, shall be provided along the perimeter of any business park in the North subarea abutting a street classified as a major arterial, secondary arterial, or collector by city street development standards. The landscaping strip shall contain an earthen berm with an average height at least five feet above the elevation of the abutting street. The width of the landscaping strip and/or the height of the berm may be increased or decreased through approval of a master plan or site plan as established by chapter 18.25 DMMC, if it is determined that such increase or decrease is necessary or required to effectively screen the business park. In the South subarea, a Type II landscaping strip, an average of at least 10 feet in depth, shall be provided along the perimeter of any building site abutting a street classified as a major arterial, secondary arterial, or collector by city street development standards.

(3) Parking facilities shall be landscaped as prescribed in DMMC 18.41.320. [Ord. 1260 § 10, 2000: Ord. 920 § 9, 1991.]

18.41.315 Pacific Ridge, PR-R, PR-C1, and PR-C2 zones.

(1) The perimeter of properties abutting a single-family residential zone shall provide a Type I landscaping strip with a minimum depth of 10 feet.

(2) The perimeter of properties abutting a multifamily residential zone shall provide a Type II landscaping strip with a minimum depth of five feet.

(3) A Type III landscaping strip, an average of five feet in depth, shall be provided along all property lines abutting a public right-of-way excluding alleys. When the building setback from a public right-of-way is not more than 10 feet, or when such setback is utilized as a public open space plaza not accompanying parking, no perimeter landscaping strip shall be permitted, but street trees as set forth in DMMC 18.41.360 shall be provided within tree planters. Such tree planters shall have a minimum interior dimension of three and one-half feet and shall be protected by a cast iron grate.

(4) Parking facilities landscaping as set forth in DMMC 18.41.320. [Ord. 1267 § 4, 2000.]

ARTICLE IV. SPECIFIC REQUIREMENTS

18.41.320 Landscaping of parking facilities.

Landscaping shall be provided within all surface (open air) parking lots, as follows:

(1) Design Criteria. Landscape areas shall be located in such a manner as to divide and break up the large expanses of pavement, divide and define driveways, parking stalls and corridors, limit cross-taxiing, delineate and separate pedestrian and vehicular traffic, and screen parking facilities from abutting properties. Planting areas and landscaping shall be reasonably dispersed throughout the parking lot with the interior dimensions of such areas being sufficient to protect the landscaping materials planted therein and to insure proper growth. The primary landscaping materials used shall consist of canopy-type deciduous trees or spreading evergreen trees planted in wells or strips with a mixture of deciduous and evergreen shrubs and/or ground cover. Shrubbery, hedges, and other planting materials shall be used to complement the tree landscaping, but shall not be the sole contribution to the landscaping. Existing vegetation, architectural barriers or berms may be incorporated into the landscape design; provided, they contribute to achieving the intent of this subsection.

(2) Interior Coverage Requirements. A minimum of five percent of a parking facility shall be landscaped. Landscaping which is required for screening along the perimeter of any lot and border plantings adjacent to buildings upon which a parking lot abuts shall not be considered as part of the interior coverage requirement. Parking spaces abutting a perimeter for which landscaping is required by other requirements of this code shall not be considered as a part of the interior of the parking facility.

(a) For off-street parking facilities providing 10 or fewer parking stalls, the interior coverage requirements stated in this section shall not apply.

(b) Any interior landscape area shall contain a minimum of 50 square feet, shall have a minimum dimension of five feet, and shall include at least one tree with the remaining area landscaped with shrubs, ground cover, or other approved landscaping materials not exceeding three feet in height.

(c) Trees shall number not less than one for each five parking stalls, to be reasonably distributed throughout the parking lot.

(d) A minimum of 40 percent of the trees shall be evergreen. [Ord. 594 § 5, 1984. Formerly 18.41.050.]

18.41.330 Types of landscaping required.

The following (DMMC 18.41.340 through 18.41.370) are types of landscaping as required in DMMC 18.41.200 through 18.41.310; all proposed plant material, sizes, and characteristics shall be in accordance with the American Association of Nurserymen Standards (ANSI 2601 - 1973). [Ord. 594 § 6(part), 1984. Formerly 18.41.060(part).]

18.41.340 Type I – Solid screen.

Type I landscaping is intended to provide a solid sight barrier to a height of 10 feet totally separating incompatible land uses. Type I landscaping shall generally consist of a mix of predominantly evergreen plantings including living trees, shrubs, and ground covers. Evergreen trees shall be a minimum height of six feet at time of planting. Plantings shall be chosen and spaced so as to grow together within two years sufficient to provide a 100 percent sight-obscuring screen. The entire planting strip shall be landscaped; however, those plantings used to achieve the sight-obscuring screen shall cover at least five feet of the width of the strip and shall be located farthest from the property line. Existing vegetation, architectural barriers (including walls, planters, and fences), or berms may be incorporated into the landscape design as set forth in DMMC 18.41.380, and shall be considered acceptable in lieu of new plantings; provided, they contribute to achieving the intent of this subsection. [Ord. 594 § 6(A), 1984. Formerly 18.41.060(1).]

18.41.350 Type II – Visual buffer.

Type II landscaping is intended to create a visual separation that is not necessarily 100 percent sight-obscuring. Type II landscaping shall consist of a mix of evergreen and deciduous plantings, trees, shrubs, and ground covers. Plantings of shrubs and ground covers shall be chosen and spaced to result in a total covering of the landscape strip. Shrubs shall be of a type that achieve a height of approximately six feet within two years, and effectively screen views along the length of the planting strip. Deciduous trees shall have a minimum trunk diameter two inches at time of planting; evergreen trees shall be a minimum six feet tall at time of planting. Trees shall be located farthest from the property line. All trees shall be spaced at intervals resulting in touching of branches after 10 years of normal growth. Existing vegetation, architectural barriers, or grading, which may be incorporated into the landscape design as set forth in DMMC 18.41.380, shall be considered acceptable in lieu of new plantings; provided, they contribute to achieving the intent of this subsection. [Ord. 594 § 6(B), 1984. Formerly 18.41.060(2).]

18.41.360 Type III – See-through buffer.

Type III landscaping is intended to provide visual separation of uses from streets and main arterials and between compatible uses so as to soften the appearance of streets, parking lots, and building facades. Type III landscaping shall consist of evergreen and deciduous trees planted not more than 30 feet on center interspersed with large and small shrubs and ground cover. Plantings of shrubs and ground covers shall be chosen and spaced to result in

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a covering of the landscape strip within two years. Shrubs shall be of a type that do not exceed a height at maturity of approximately three to four feet. Deciduous trees shall have a minimum trunk diameter of two inches at time of planting. Evergreen trees shall be a minimum of six feet tall at time of planting. Existing vegetation, architectural barriers, or grading may be incorporated into the landscape design as set forth in DMMC 18.41.380 and shall be considered acceptable in lieu of new plantings; provided, they contribute to achieving the intent of this subsection. [Ord. 594 § 6(C)(part), 1984. Formerly DMMC 18.41.060(3)(part).]

18.41.370 Downtown Des Moines business district.

Street trees are required within the planting strip abutting public rights-of-way in the downtown Des Moines district, that area lying between South 216th Street and South 230th Street, 10th Avenue South and Puget Sound, in accordance with tree species standards adopted by the city manager in consultation with the community development department and parks division. [Ord. 989 § 1, 1992: Ord. 594 § 6(C)(1), 1984. Formerly 18.41.060 (3)(A)].

18.41.380 Modification of landscaping requirement(s).

(1) The community development department may authorize reduced width of plantings or waive some or all landscaping requirements in the following instances:

(a) Whenever a building utilized for business or office purposes is proposed to be placed within 10 feet of the street right-of-way and there are no loading docks on such street, and at least 50 percent of the wall length is utilized for window and door construction, and the setback is utilized in effect as a sidewalk; provided, approved street trees are planted within the 10-foot setback no more than 30 feet on center.

(b) When architectural barriers or berms are incorporated into the design of the landscaping and contribute to the intent of the type of landscaping required and the minimum width of planting is not reduced by more than 50 percent;

(c) When application of requirements of this section for commercial properties would result in more than 15 percent of the site area being landscaped, in which instance the community development department may modify those requirements such that not more than 15 percent of the site must be landscaped; provided, however, that the landscaping and corresponding setbacks required are those most beneficial to the public;

(d) When the inclusion of significant existing vegetation located on the site would result in as good as or better satisfaction of the purposes of this chapter;

(e) When, in the case of required perimeter landscaping adjacent to street rights-of-way, the ultimate street improvements for that right-of-way have been installed or will be installed as a requirement of approval of the development, and the building and community development departments determine that the proposed landscaping of that portion of the right-of-way between the property line and sidewalk is acceptable, the community development department may allow such landscaping in lieu of required landscaping within the development; provided, the type and area of planting is comparable to that normally required and adequate provisions are made for permanent maintenance;

(f) When conditions on or adjacent to the site, including differences in elevation, existing vegetation, location of existing structures or utilities, continuity of design concepts within a zone, emergency vehicle access would render application of requirements of this chapter ineffective or result in scenic view obstruction.

(2) An application for adjustment of landscaping requirements shall be filed on forms prescribed by the city, executed and sworn to by the owner or tenant of the property concerned or by duly authorized agents. Such application shall clearly and in detail state what adjustments of requirements are being requested and the reasons such adjustments are warranted, and shall be accompanied with such supplementary data, such as sketches,

surveys, and statistical information as deemed necessary to substantiate the adjustment.

(a) The applicant shall give all owners of property located within 100 feet of any boundary of the subject property written notice of the proposed alternative landscaping within 20 days of filing an application. The community development department shall allow 15 days for comment before making a decision.

(b) The decision of the community development department regarding alternative landscaping shall be made within 45 days of filing of an application, shall be transmitted in writing to the applicant and all interested parties and shall identify reasons for denial or requirements for modifications, if any.

(c) The decision of the community development department shall be final unless an aggrieved person appeals that decision to the hearing examiner by filing a written notice of appeal within 10 days of such decision in accordance with the hearing examiner code. [Ord. 1237 § 3, 1999; Ord. 770 § 60, 1988: Ord. 594 § 7, 1984. Formerly 18.41.070.]

18.41.390 Landscape performance requirements.

(1) All landscaping required pursuant to this chapter shall be installed prior to issuance of a certificate of occupancy, unless the community development department approves a request for an extension due to adverse weather conditions. Extensions shall not exceed six months unless adverse weather conditions persist for an unusual length of time.

(2) If extension of installing landscape improvements is granted, the owner shall post a performance bond, letter of credit, or other security device acceptable to the city in an amount equal to 120 percent of the estimated value of the landscape materials including labor, shown on an approved landscaping plan. The owner shall also provide a complete bid proposal from a qualified installer stating that such landscaping can be installed (labor and material) for the bond amount. The bid must remain acceptable by installer for a period of two months longer than the requested extension time. If required landscaping has not been installed within the period allowed by this chapter, including any extension granted by the city, the city may enter upon the property and use the performance bond or other security device to perform work necessary to implement the landscape plan.

(3) It shall be the responsibility of the project manager or business owner to contact the community development department upon completion of the landscaping work and request inspection.

(4) The community development department may inspect the landscaping upon request of the project manager or business owner or at any time after the expiration of the extension date. [Ord. 937 § 3, 1992: Ord. 594 § 8, 1984. Formerly 18.41.080.]

18.41.400 Enforcement.

This chapter shall be enforced in the manner specified in DMMC 18.72.040 through 18.72.080. [Ord. 594 § 9, 1984. Formerly 18.41.090.]

ARTICLE V. SOLID WASTE CONTAINERS

18.41.500 Solid waste container screening required in multifamily residential and commercial zones.

(1) All solid waste containers located in multifamily residential or commercial zones shall be screened from abutting properties and public rights-of-way by a 100 percent sight-obscuring fence, wall, or other enclosure. Such solid waste container enclosure may be permanent or portable.

(2) The community development director may waive the requirements of this section upon written findings that undue hardship and results inconsistent with the intent of this chapter would result. The method by which such screen is achieved is left to the discretion of the property owner, although the city encourages compatibility with building and site characteristics, such as repetition of main building materials, color and texture, except the community development director may require spe-

cific design features as are necessary to meet the intent of this chapter. [Ord. 1237 § 4, 1999; Ord. 1069 § 4, 1993: Ord. 937 § 6(part), 1992; Ord. 629 § 2, 1985. Formerly 18.38.010.]

18.41.504 Area for solid waste containers required.

Area for solid waste containers shall be provided in all commercial and multifamily developments. Planned unit developments designed for individual dwelling solid waste service are excluded from this requirement. Area for containers for both garbage and recyclable materials shall be provided. The community development director may develop administrative guidelines regarding the size and location of areas for solid waste containers. [Ord. 1069 § 8, 1993.]

18.41.510 Location of private solid waste containers.

(1) No solid waste container in multifamily or commercial zones shall be located upon a public right-of-way or within a designated driveway or private access street.

(2) Parking spaces shall not be used for solid waste containers, except the community development director is authorized to permit the dedication of one parking space on developed sites for a solid waste enclosure pursuant to the screening standards stated in DMMC 18.41.500 when the property owner can demonstrate that no other practical location for the enclosure exists. [Ord. 1069 § 5, 1993: Ord. 937 § 6(part), 1992; Ord. 629 § 3, 1985. Formerly 18.38.020.]

18.41.520 Location and screening of public solid waste containers.

Solid waste containers placed for the purpose of supporting waste reduction and/or the health and sanitation needs of the general public shall be located, screened, and/or designed in such a manner as to employ a maximum of screening commensurate with utility and convenience of use by the public populations that the containers serve. When sight-obscuring screening methods are impractical, the containers shall be so screened and/or designed to minimize unsightliness, to blend with the surroundings, and with special consideration given to public liability and prevention of vandalism or theft. [Ord. 1069 § 6, 1993: Ord. 937 § 6(part), 1992; Ord. 727 § 6, 1988. Formerly 18.38.025.]

18.41.530 Exemptions.

Solid waste container screening shall not be required for the following:

(1) Single-family residences when solid waste containers 90 gallons or less are used;

(2) Mobile home parks when individual solid waste containers 90 gallons or less are used and such containers are located adjacent to the dwelling unit they serve;

(3) Temporary construction solid waste containers during the period of land clearing, grading, and construction;

(4) Temporary solid waste containers used for a period not exceeding 30 days;

(5) Containers that are owned by the city or a nonprofit corporation whose objectives are the beautification of the city or improvement of the business climate of the city, which receptacles have been placed as street furniture or otherwise with the permission of the city and with the approval of the community development director as to design and location; and

(6) Containers, including street furniture, in commercial and multifamily zones that have been approved by the community development director as to design and location. [Ord. 1069 § 7, 1993: Ord. 937 § 6(part), 1992; Ord. 727 § 7, 1988: Ord. 629 § 4, 1985. Formerly 18.38.030.]

18.41.540 Nonconforming trash containers.

Repealed by Ord. 1069. [Ord. 937 § 6(part), 1992; Ord. 629 § 5, 1985. Formerly 18.38.040.]

18.41.550 Variances.

Repealed by Ord. 1069. [Ord. 937 § 6(part), 1992; Ord. 770 § 59, 1988: Ord. 629 § 6, 1985. Formerly 18.38.050.]

Chapter 18.42

SIGNS

Sections

ARTICLE I. GENERAL PROVISIONS

18.42.010 Purpose.

It is the purpose of this chapter to safeguard the life, health, property, and welfare of the citizens of the city by regulating and controlling the design, construction, location, use, illumination, and maintenance of signs and sign structures visible from any portion of public property or rights-of-way. The intent of the standards set forth in this chapter is:

(1) To protect the right of business to identify its premises and advertise its products through the use of signs without undue hindrance or obstruction.

(2) To encourage the design of signs that attract and invite rather than demand the public's attention and to curb the proliferation of signs.

(3) To encourage the use of signs that enhance the visual environment of the city.

(4) To assure equal protection and fair treatment under the law through consistent application of the regulations and consistent enforcement.

(5) To promote the enhancement of business and residential properties and neighborhoods by fostering the erection of signs complementary to the buildings and uses to which they relate and which are harmonious

with their surroundings. [Ord. 1509 § 4, 2011: Ord. 584 § 1(part), 1983.]

18.42.020 Exceptions.

Repealed by Ord. 1509. [Ord. 584 § 1(part), 1983.]

18.42.030 Definitions.

(1) "Abandoned sign" means a sign that no longer correctly identifies, exhorts, or advertises any person, business, lessor, owner, product, or activity conducted or available on the premises where the sign is located.

(2) "Advertising copy" means any letters, figures, symbols, logos, or trademarks which identify or promote the sign user or any product or service; or which provides information about the sign user, the building or the products or services available.

(3) "Awning" means a cloth structure attached to, supported by, and projecting from a building and providing protection of the weather elements. Also called a "canopy."

(4) "Awning sign" means any sign which forms part of or is integrated into an awning and which does not extend beyond the limits of the awning.

(5) "Building" means a roofed and walled structure built for permanent use.

(6) "Changing message center" means an electronically controlled message center with different copy changes of a public service or commercial nature.

(7) "Comprehensive design plan" means building, design, landscaping, and signs integrated into one architectural plan, the comprehensive plan being complete in all other building, structural, and electrical requirements.

(8) "Double-faced sign" means a sign that has a sign on opposite sides of a single display surface or sign structure.

(9) "Electrical sign" means a sign or sign structure in which electrical wiring, connections and/or fixtures are used as part of the sign proper.

(10) "Facade" means the entire building front or street wall face of a building extending from the grade of the building to the top of the parapet or eaves and the entire width of the building elevation or elevations.

(11) "Flashing sign" means a sign with any portion thereof which changes light intensity or switches on and off in a constant pattern or contains moving parts or the optical illusion of motion caused by use of electrical energy or illumination.

(12) "Freestanding sign" means a sign attached to the ground and supported by uprights placed on or in the ground.

(13) "Frontage" means the measurement of the length of the property line along a street.

(14) "Grade" means the elevation as measured at the relative ground level in the immediate vicinity of the sign.

(15) "Ground sign" means a freestanding sign that is less than five feet in height.

(16) "Incidental sign" means a small nonelectric information sign two square feet or less in area which pertains to goods, products, services, or facilities which are available on the premises where the sign occurs and is intended primarily for the convenience of the public while on those premises.

(17) "Information sign" means a sign which gives directional information or identifies specific use areas and which is necessary to maintain the orderly internal use of the premises, such as those signs which identify employee parking, shipping, clearance, or which restrict ingress and egress. Excluded from this definition are signs which are not directly related to an identified need for orderly internal use of the property and off-premises or portable signs.

(18) "Inspector" includes any city employee working under the authority and direction of the city manager or designee.

(19) "Landscaping" means any material used as a decorative feature, such as textured concrete bases, planter boxes, rockeries, driftwood, pole covers, decorative framing, and shrubbery or planting materials, used in conjunction with a sign, which expresses the theme of the sign but does not contain advertising copy.

(20) "Mansard roof" means a sloped roof or roof-like facade architecturally able to be treated as a building wall.

(21) "Marquee" means a permanent structure attached to, supported by, and projecting from a building and providing protection from the weather elements, but does not include a projecting roof. For the purposes of this chapter, a freestanding permanent roof-like structure providing protection from the elements, such as a service station gas pump island, will also be considered a marquee.

(22) "Marquee sign" means any sign which forms part of or is integrated into a marquee and which does not extend beyond the limits of the marquee.

(23) "Monument sign" means a sign above grade which is mounted or attached to a wide base or grade. These signs are composed of a sign face and a sign base. The base and architectural detail must be consistent with the character of the primary structure.

(24) "Multiple-building complex" means a group of structures housing at least one retail business, office, commercial venture, or independent or separate part of a business located on different properties but with shared accesses and parking facilitates.

(25) "Multiple business property" means a single property housing more than one retail business, office, or commercial venture in a single structure; but not including residential apartment buildings or shopping centers.

(26) "Off-premises directional sign" means a sign erected for the purpose of directing pedestrian or vehicular traffic to a facility, service, or business located on other premises.

(27) "On-premises sign" means a sign which carries only advertisements strictly applicable to a lawful use of the premises on which it is located, including signs or sign devices indicating the business transacted, principal services rendered, and goods sold or produced on the premises, name of the business, name of the person, firm, or corporation occupying the premises.

(28) "Perimeter" means the boundary lines used to define the extent of an area.

(29) "Person" means any person, firm, partnership, association, corporation, company, institution, or organization.

(30) "Pole sign" means any freestanding sign more than five feet in height that does not meet the definition of monument sign. These signs are composed of the sign cabinet or base and the sign pole or pylon by which it connects to the ground.

(31) "Portable sign" means a sign which is not permanently affixed and is designed for or capable of being moved, except those signs explicitly designed for people to carry on their person.

(32) "Premises" means the real estate (as a unit) which is involved by the sign or signs mentioned in this chapter.

(33) "Projecting sign" means a sign which is attached to and projects more than one foot from a structure or building face.

(34) "Public commercial parking area" means an open area other than a street, alley, or private parking area serving the occupants, patrons, or employees of a dwelling, hotel, business, or apartment to which the private parking area is appurtenant, which area is used for the parking of more than four automobiles.

(35) "Reader board" means a sign face designed with readily changeable letters allowing frequent changes of copy either manually or electronically.

(36) "Real estate sign" means a portable or freestanding sign erected by the owner or his agent advertising the real estate upon which the sign is located for rent, lease, or sale or directing to the property.

(37) "Revolving sign" means a sign which rotates or turns in motion in a circular pattern.

(38) "Roof line" means the top edge of a roof or parapet; the top line of a building silhouette.

(39) "Roof sign" means a sign supported by and erected on or above the roof line of a building or structure.

(40) "Shopping center" means a grouping of retail business and/or service uses on a single development site consisting of five acres or more housed in multiple structures or a single building with common parking facilities.

(41) "Sign" means any visual communication device, structure, or fixture which is visible from off premises and which directs attention to an object, product, place, activity, facility, service, event, attraction, person, institution, organization, business, or building.

Painted wall designs or patterns which do not represent a product, service, or trademark or which do not identify the user are not considered signs.

(42) "Sign area" means the entire area within a circle or polygon enclosing the extreme limits of the advertising message together with any frame or decoration forming an integral part of the display or used to differentiate the sign from the background against which it is placed. If the sign is composed of more than two sign cabinets or modules, the area enclosing the entire perimeter of all cabinets and/or modules within a single square or rectangular figure is the area of the sign. Multisided signs, signs composed of two or more sides of equal area attached to each other but occupying different planes, shall have their areas computed by excluding the area of one side from the sum of the areas of all other sides. The total surface area of spherical or cylindrical signs is the sign area.

(43) "Sign height" means the vertical distance from grade to the highest point of a sign or any vertical projection thereof, including its supporting columns.

(44) "Sign structure" means any structure which supports or is designed to support any sign as defined in this chapter. A sign structure may be a single pole and may or may not be an integral part of the building.

(45) "Single business property" means a single structure housing one business located on a single property without shared access and/or parking facilities.

(46) "Street" means a right-of-way, dedicated to the public use, which provides vehicular access to adjacent properties.

(47) "Street frontage" means the linear frontage of a single parcel of property or common development site abutting a public street.

(48) "Temporary construction sign" means a sign jointly erected and maintained on premises undergoing construction, by an architect, contractor, subcontractor, and/or materialman, upon which property the individual is furnishing labor or material.

(49) "Temporary sign" means any sign or advertising display constructed of cloth, canvas, light fabric, paper, cardboard, or other light materials, with or without frames, intended to be displayed for a limited time only. Signs painted upon window surfaces which are readily removed by washing shall be considered temporary signs.

(50) "Under marquee sign" means a sign attached to and suspended from the underside of a marquee or canopy.

(51) "Wall sign" means a sign attached or erected parallel to and extending not more than one foot from the facade or face of any building to which it is attached and supported throughout its entire length, with the exposed face of the sign parallel to the plane of the wall or facade. Signs incorporated into mansard roofs, marquees, or canopies shall be treated as wall signs. [Ord. 1509 § 6, 2011: Ord. 1267 § 11, 2000; Ord. 584 § 2, 1983.]

ARTICLE II. PERMITS

18.42.040 Required.

No sign shall be erected, re-erected, constructed, painted, posted, applied, altered, structurally revised, or repaired except as provided in this chapter and pursuant to a permit issued by the city manager or designee. A separate permit shall be required for a sign or signs for each business entity and/or a separate permit for each group of signs or a single supporting structure installed simultaneously. Thereafter, each additional sign erected on the structure must have a separate permit. [Ord. 1509 § 5, 2011: Ord. 584 § 3(part), 1983.]

18.42.050 Exemptions.

The following shall not require a sign permit; these exemptions shall not be construed as relieving the owner of a sign from the responsibility of its erection and maintenance and its compliance with the provisions of this chapter or any other law or ordinance regulating the same:

(1) The changing of the advertising copy or message on a lawfully erected, painted, or printed sign, theater marquee, or similar signs specifically designed for the use of replaceable copy.

(2) Painting, repainting or cleaning of a lawfully erected sign structure or the changing

of the advertising copy or message thereon and other normal maintenance unless a structural or electrical change is made.

(3) Temporary decorations customary for special holidays, such as Christmas and Independence Day, erected entirely on private property.

(4) Real estate signs subject to the following requirements:

(a) Signs shall not exceed eight square feet in residential zones and 24 square feet in commercial zones.

(b) Signs shall be limited to one sign per street frontage on the premises for sale, lease, or rent, and three portable directional signs to such property.

(c) Portable off-premises directional real estate signs providing directions to an open house at a specified residence or commercial building that is offered for sale or rent are permitted only when:

(i) Signs are not placed on trees, foliage, utility poles, or placed on or interfere with official traffic control devices and their support structures installed by the city traffic engineer or the state.

(ii) Each sign does not exceed four square feet in area and 36 inches in height.

(iii) The agent or seller is physically present at the property for sale or rent.

(iv) The total number of directional signs is limited to three.

(v) Each sign if located in the public right-of-way is subject to the requirements and regulations of subsection (12)(e) through (k) of this section.

(vi) The signs may only be in place during the hours of the open house.

(5) On-premises information signs guiding or directing traffic onto or off of a lot or within a lot, incidental signs, and internal information signs not over eight square feet in area and do not exceed six feet in height. The information or copy displayed by or on any internal informational sign shall be limited to only those letters and/or symbols necessary to convey the required message in as brief a manner as reasonably possible and shall not advertise in any manner the facility occupying the premises nor goods or services available nor hours of operation.

(6) Political signs subject to the following requirements:

(a) Political signs promoting or publicizing candidates for public office or issues that are to be voted upon in a general or special election may be displayed on private property. Such signs shall be removed within 10 days following the election; provided, that signs promoting successful candidates in a primary election may remain displayed until 10 days following the immediately subsequent general election.

(b) It is prohibited for any person to paste, paint, affix, or fasten a political sign on any tree, foliage, utility pole, on any public building or structure, or on or to interfere with any official traffic control device and their support structures installed by the city traffic engineer or the state.

(c) Political signs posted within public right-of-way are subject to the requirements and regulations of subsection (12)(e) through (k) of this section. Additionally, political signs in the right-of-way are limited to a maximum surface area of four square feet and a maximum height of five feet.

(d) It shall be the responsibility of the candidate to have the signs removed.

(7) One nonelectrical and nonilluminated business identification sign containing no advertising matter over four square feet in area.

(8) One on-premises nonilluminated bulletin board not over 12 square feet in area for a charitable or religious organization.

(9) For each street frontage of the premises, one nonilluminated temporary construction sign denoting the architect, engineer, and/or contractor when placed on work under construction, and not exceeding 32 square feet in area.

(10) Memorial signs or tablets, including names of buildings, and date of erection when cut into a masonry surface or when constructed of bronze or other noncombustible materials.

(11) Nonelectrical identification signs which contain no more than the name and address of the dweller or tenant of a residence

shall be allowed. Only one such sign not over two square feet in area shall be allowed for each street frontage of a residential dwelling within the city.

(12) Portable signs located in the public right-of-way subject to the following requirements:

(a) Signs shall not be affixed to the ground, including through the use of stakes or other means that may damage property.

(b) No more than two signs are allowed per business and no person may have more than two signs at any one time.

(c) Sign area shall neither exceed six square feet per sign face nor 36 inches in height.

(d) Signs are allowed only during the hours of operation of the business or for the duration of special events and must be taken indoors each day.

(e) Signs may not be placed on or attached to other objects, including but not limited to buildings, structures, trees, plants, utility poles, utility boxes, utility equipment, other signs, or on or to interfere with any official traffic control device and their support structures installed by the city traffic engineer or the state.

(f) Signs shall not be placed in a manner that interferes with vehicle, bicycle, wheelchair, or pedestrian sight line views, or travel.

(g) Signs shall not be placed in street medians or traffic islands.

(h) Signs shall not be placed in a manner that will damage city landscaping, irrigation or other city infrastructure or obstruct a drainage system. Any damage as the result of the placement of the portable sign will be the responsibility of the owner of the sign.

(i) Signs shall be professionally prepared and maintained in good condition so as to preserve the aesthetic value of the total environment.

(j) Signs shall have a name and contact phone number or other contact information on them.

(k) Signs placed in violation of this subsection (12) are subject to immediate removal and may be subject to destruction by the city, without prior notice. If the owner of the sign is present at the time of removal, the owner is given an opportunity to remove the sign immediately.

(13) Signs used exclusively for:

(a) Display of official notices used by any court, public body, or official, or for the posting of notices by any public officer in the performance of a public duty, or by any person in giving legal notice; provided, however, that such notices are subject to the requirements and regulations of subsection (12)(e) through (k) of this section.

(b) Official directional, warning, or information signs of a public or semipublic nonprofit entity erected by or with the approval of the city; provided, however, the design and placement of such signs shall be subject to the approval of the city manager or designee and, if located in the public right-of-way, shall require a right-of-way use permit and shall be subject to the requirements and regulations of subsection (12)(e) through (k) of this section. All such signs shall be installed by or under the direction of the city manager or designee and may be removed by the city if they become damaged, unsightly, or otherwise fall into a state of disrepair. Upon such removal, replacement signs may be installed. The city manager is authorized to establish a fee schedule for labor, equipment, and materials expended from public funds for installation of signs and/or posts.

(14) Official traffic control devices and their support structures installed by the city traffic engineer or state.

(15) Signs not intended to be viewed from and not readable from off premises.

(16) Window merchandise displays.

(17) Point-of-purchase advertising displays, such as product dispensers.

(18) National flags, flags of political subdivisions and symbolic flags of an institution.

(19) Barber poles.

(20) Historic site markers and plaques.

(21) Gravestones.

(22) Structures intended for separate use, such as phone booths.

(23) Identification signs upon recycling collection containers or other collection con-

tainers for public, charitable or nonprofit organizations.

(24) Lettering or symbols painted directly onto or flush-mounted magnetically onto an operable motor vehicle operating in the normal course of business.

(25) Sculptures, fountains, mosaics, or other public art features that do not incorporate advertising or identification of a business or product.

(26) Temporary construction signs subject to the following standards:

(a) Sign shall not exceed 32 square feet.

(b) No more than one sign is allowed per street frontage.

(c) Sign shall be removed upon completion of the project, except as provided in DMMC 18.42.120. [Ord. 1509 § 7, 2011: Ord. 1139 § 1, 1995: Ord. 637 § 1, 1985; Ord. 584 § 3(A), 1983.]

18.42.060 Application.

Applications for sign permits shall be made to the city manager or designee upon forms provided by the city.

(1) Applications for sign permits shall be accompanied by:

(a) Two site (plat) plans showing the location of the affected lot, building or buildings, and sign or signs, showing both existing signs and awnings and the proposed sign;

(b) Two copies of a scale drawing of the proposed sign or sign revision, including size, height, copy, structural and footing details, material specifications, methods of attachment, illumination, landscaping, front and end views of awning, sample of canvas, calculations for dead load and wind pressure, photograph of site and building marked to show where sign or awning is proposed, and any other information required to ensure compliance with appropriate laws;

(c) Written consent of the owner of the building, structure, or property where the sign is to be erected;

(d) A permit fee as set by written administrative directive.

(2) Exceptions.

(a) The city manager or designee may waive submission of plans and specifications when the structural aspect is of minor importance.

(b) If the sign to be installed is to replace a nonconforming sign, the permit and plan check fees may be waived at the discretion of the city manager or designee. [Ord. 1509 § 8, 2011: Ord. 584 § 3(B), 1983.]

18.42.070 Inspections.

(1) All signs controlled by this chapter are subject to periodic inspection by the inspector. The inspector shall keep records reflecting inspection dates and results thereof.

(2) Footing inspections shall be made by the inspector for all signs having footings.

(3) Every new sign shall bear the permit number and date of issue prominently and permanently affixed.

(4) Every temporary sign requiring a permit shall bear a legible notation of its expiration date.

(5) If the inspector is required to reinspect a new installation due to no fault of the inspector, a reinspection fee shall be charged in accordance with administration directive. [Ord. 1509 § 9, 2011: Ord. 584 § 3(C), 1983.]

18.42.080 Variances.

No variances are permitted from the requirement of this chapter; provided, however, that nothing prevents any interested party from appealing administrative decisions in accordance with the hearing examiner code. [Ord. 770 § 61, 1988: Ord. 584 § 3(D), 1983.]

18.42.090 Special use permits.

The city manager or designee is authorized to grant a special use permit for the following purposes:

(1) Temporary signs, banners and/or posters not exceeding 40 square feet, strings of pennants, ribbons, flags, streamers, balloons, spinners, or other devices of a carnival nature may be permitted for temporary or special events, such as a grand opening, but such use shall not exceed 45 days within a three-month

period. No more than three types of temporary signs may be displayed at any one time.

(2) Temporary signs exceeding 40 square feet but not exceeding 200 square feet may be permitted for temporary or special events, such as a grand opening, but such use shall not exceed 45 days. Only five such permits shall be issued to any business during a calendar year. The total aggregate of temporary signs shall be no more than 400 square feet.

(3) Inflatable displays exceeding 40 square feet and searchlights may be permitted for temporary or special events, such as a grand opening, but such use shall not exceed 10 days. Only three such permits shall be issued to any business during a calendar year.

(4) Off-premises directional signs advertising group sales of single-family residences or condominiums; provided, the following conditions shall apply:

(a) Each sign permitted under this section may contain two sign faces, each of which is no larger than 16 square feet, and no more than two signs per group sale shall be permitted;

(b) The maximum height of any such sign shall be eight feet from grade;

(c) The maximum duration of any such sign shall be 90 days or whenever the property advertised in the sign is sold, whichever occurs first; provided, the special permit may be renewed and reissued for additional 90-day periods if the property advertised in the sign has not been sold;

(d) An applicant who is granted a permit under this section shall relinquish the general privilege to place three off-premises directional signs per property under the provisions of DMMC 18.42.050(4) but shall be permitted to place an additional three off-premises directional signs for the entire group sale; provided, such signs comply with the requirements in DMMC 18.42.050(4). [Ord. 1509 § 10, 2011: Ord. 1139 § 2, 1995: Ord. 873 § 1, 1990: Ord. 584 § 3(E), 1983.]

ARTICLE III. COMPREHENSIVE DESIGN PLAN PERMITS

18.42.100 Purpose.

The requirements and restrictions of this chapter may be modified by the city manager or designee when an applicant is using a comprehensive design plan to integrate signs into the framework of the building or buildings, landscaping, and other design features of the property, utilizing an overall design theme. Comprehensive design may be used on an existing building where the facade is being altered, new construction or in freestanding signs. [Ord. 1509 § 11, 2011: Ord. 584 § 3(F)(part), 1983.]

18.42.110 Application – Supplementary material.

Applications for comprehensive design plan permits shall be submitted on forms provided by the city manager or designee and shall be accompanied by the following:

(1) A narrative describing the proposed plan, including, but not limited to, the following information:

(a) How the physical components of the sign structure relate to the copy area, detailing legibility and readability factors based on traffic speed, sign placement, and letter size;

(b) How the sign(s) relate to the immediate surroundings, including buildings, other signs, landscaping, and other decorative features;

(c) How the sign or signs relate to the desired land use characteristics promoted by the comprehensive plan and this chapter;

(d) How the elements and design of the sign(s) promote and enhance the overall design theme established by the adopted design guidelines for the marina district or the Pacific Ridge neighborhood;

(e) Evaluation of potential adverse effects on adjacent property.

(2) A site plan and colored renderings of the sign(s) and building faces on which the signs will be mounted. Graphic submittals shall illustrate how the total sign proposal will

appear from the street(s) from which the signage is intended to be seen.

(3) Regular sign permit application. [Ord. 1509 § 12, 2011: Ord. 584 § 3(F)(1), 1983.]

18.42.120 Criteria for granting.

The city manager or designee shall employ the following criteria when evaluating the proposed comprehensive signage plan;

(1) Whether the proposal manifests an exceptional effort toward creating visual harmony between the sign, buildings, and other components of the subject property through the use of a consistent design theme;

(2) Whether the sign or signs promote the planned land use in the area of the subject property and enhance the aesthetics of the surrounding area;

(3) Whether the sign placement and size obstructs or interferes with any other signs or property in the area or obstructs natural or scenic views;

(4) Whether the proposed sign or signs is/are better coordinated, more harmonious with surrounding development including other signage and the architectural concepts employed in the building's site then could be installed under existing criteria in this chapter. [Ord. 1509 § 13, 2011: Ord. 584 § 3(F)(2), 1983.]

ARTICLE IV. ZONES GENERALLY

18.42.130 Applicability.

The regulations in this article shall apply in all zones and to all signs governed by this chapter, subject to the specific regulations of each zone. [Ord. 1509 § 14, 2011: Ord. 1237 § 3, 1999; Ord. 584 § 4(part), 1983.]

18.42.140 Structural requirements.

The structure and installation of all signs within the city shall be governed by the applicable provisions of Title 14 DMMC. [Ord. 977 § 1, 1992: Ord. 584 § 4(A), 1983.]

18.42.150 Prohibited signs.

The following signs are prohibited:

(1) Abandoned signs;

(2) Signs or sign structures, which by coloring, shape, wording, or location resemble or conflict with official traffic control signs or devices;

(3) Signs that create a safety hazard for pedestrian, wheelchair, bicycle, or vehicular traffic;

(4) All flashing signs;

(5) Signs attached to or placed on a vehicle or trailer parked on public or private property or public right-of-way; provided, however, that this provision shall not be construed as prohibiting the identification of a firm or its products on a vehicle operating during the normal course of business. Public transit vehicles and taxis are exempt from this provision;

(6) Off-premises signs, except real estate signs, political signs, and portable signs as expressly allowed in DMMC 18.42.050, public service/civic event signs, garage sale signs, and off-premises signs permitted by special use permit as provided in DMMC 18.42.090;

(7) Any sign affixed to or painted on trees, rocks, or other natural features, or utility poles and the like including advertising signs affixed to or painted on fences;

(8) Roof signs;

(9) All portable reader board signs;

(10) Strings of pennants, banners, posters, ribbons, streamers, balloons, spinners, searchlights, or other devices of a carnival nature, except as provided in DMMC 18.42.090;

(11) Home occupation signs;

(12) Any sign that is not specifically permitted by this chapter. [Ord. 1509 § 15, 2011: Ord. 584 § 4(B), 1983.]

18.42.160 Maintenance.

All signs, together with all of their supports, braces, guys, and anchors, shall be maintained in good repair and in a safe, neat, clean, and attractive condition. [Ord. 584 § 4(C), 1983.]

18.42.170 Abandoned signs.

Abandoned signs shall be removed by the owner or lessee of the premises upon which the sign is located within 90 days after the business or service advertised by the sign is no

longer conducted on the premises. [Ord. 584 § 4(D), 1983.]

18.42.180 Illumination.

The light directed on, or internal to, any sign shall be so shaded, shielded and/or directed so that the light intensity or brightness shall not adversely affect surrounding or facing premises or adversely affect safe vision of operators of vehicles moving on private or public roads, highways, or parking areas, or adversely affect safe vision of pedestrians on a public right-of-way. Light shall not shine upon nor reflect into residential structures. Beacon lights or searchlights shall not be permitted for advertising purposes except within the commercial zones and in conjunction with temporary or special events not exceeding 10 days as permitted by special use permit. Luminosity shall not exceed 100 foot lamberts measured at the sign face. [Ord. 1237 §§ 3, 4, 1999; Ord. 584 § 4(E), 1983.]

18.42.190 Landscaping.

At the time of installation, all freestanding signs shall include landscaping and curbing around the base of the sign to prevent automobiles from hitting the sign structure and to improve the overall visual appearance of the structure. Landscaping shall be in proportion to the size and height of the signs, with a minimum of one-half square foot of landscaping for each square foot of sign area and shall be maintained throughout the life of the sign. No dead shrubs, broken parts, cracked, or extremely chipped material shall be allowed to remain without repair. [Ord. 584 § 4(F), 1983.]

18.42.200 Clearance and sight distance.

Marquees or projecting signs which project over areas where motor trucks may be required to pass beneath them shall maintain a minimum vertical clearance of 15 feet. No marquee or projecting sign may project closer than two feet from the curbline of the street. Signs must maintain a minimum of eight feet of vertical clearance over pedestrian ways. [Ord. 584 § 4(G), 1983.]

18.42.210 Exposed angle irons and guy wires prohibited.

No angle irons, guy wires, or braces used in conjunction with a projecting sign shall be visible, except those which are an integral part of the overall design. [Ord. 584 § 4(H), 1983.]

18.42.220 Electronic reader board and changeable message center signs.

Except as provided in subsection (11) of this section, all electronic reader board signs and changeable message center signs shall comply with the following:

(1) Advertising messages on electronic reader boards and message centers may contain words, phrases, sentences, symbols, trademarks, and logos. A single message or a message segment must have a static display time of at least two seconds after moving onto the reader board or message center, with all segments of the total message to be displayed within 10 seconds. A one-segment message may remain static on the reader board or message center with no duration limit.

(2) Displays may travel horizontally or scroll vertically onto electronic reader boards or message centers, but must hold in a static position for two seconds after completing the travel or scroll.

(3) Displays shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or animate as it moves onto, is displayed on, or leaves the reader board or message center.

(4) Electronic signs requiring more than four seconds to change from one single message display to another shall be turned off during the change interval.

(5) Maximum brightness shall not exceed 5,000 nits during daylight hours when measured from the face of the sign and 500 nits from sunset to sunrise when measured from the face of the sign.

(6) Signs shall have programmable dimming capacity.

(7) Audio speakers associated with signs allowed under this section are prohibited.

(8) Signs allowed under this section shall not exceed or be in addition to the total allowable freestanding sign area allowed in the various zones established in Article V of this chapter.

(9) Signs allowed under this section shall not be used as wall signs and shall not be used as individual tenant signs.

(10) Electronic reader board and changeable message center signs shall not be placed on, above, or over the right-of-way.

(11) This section shall not apply to official traffic control devices installed by the city traffic engineer or the state. [Ord. 1509 § 2, 2011.]

18.42.230 Political signs.

Repealed by Ord. 1509. [Ord. 584 § 4(J), 1983.]

18.42.240 Temporary construction signs.

Repealed by Ord. 1509. [Ord. 1139 § 3, 1995: Ord. 584 § 4(K), 1983.]

18.42.250 Bonus provisions.

In each of the zones, total sign area may be increased by 25 percent if the business uses only wall signs. Allowable sign area for freestanding signs may be increased by 25 percent if ground signs or monument signs are used instead of pole signs. [Ord. 1237 § 3, 1999; Ord. 584 § 4(L), 1983.]

18.42.260 Signs prohibited on, above, or over right-of-way.

(1) Except as provided in subsections (2) and (3) of this section and DMMC 18.42.050, 18.42.310, and 18.42.320, no person shall place a sign of any size or description:

(a) On, above, or over the right-of-way of a city street;

(b) On, above, or over the right-of-way of a state highway;

(c) On a bridge or overpass; or

(d) On a public or utility improvement.

(2) For a period of 30 days or less, signs advertising community events sponsored by public service organizations may be placed on, above, or over the right-of-way of a city street or a state highway with the written permission of the city manager, and an approved right-of-way permit.

(3) Banners installed over a state highway shall be subject to the requirements established by WAC 468-95-148 and chapter 47.42 RCW. The city manager is authorized to establish a fee schedule for labor, equipment, and materials expended from public funds for installation of banners.

(4) This section shall not apply to official traffic control devices installed by the city traffic engineer, or the state. [Ord. 1509 § 1, 2011.]

18.42.270 Placement.

All signs, except real estate directional signs, political signs, and portable signs expressly allowed under DMMC 18.42.050, and off-premises signs approved under DMMC 18.42.090, must be located on the premises of the business that they advertise. Advertising signs located on premises other than the premises of the business they advertise are forbidden, notwithstanding single ownership of more than one premises, except where the premises are contiguous. For the purposes of this section "contiguous" means that such buildings are joined and/or interior access provided from one to the other. [Ord. 1509 § 16, 2011: Ord. 584 § 4(N), 1983.]

ARTICLE V. REGULATIONS BY ZONE

18.42.280 Applicability.

In addition to the provisions in Article IV, the regulations in this article shall apply within the various zones. [Ord. 1509 § 17, 2011: Ord. 1237 § 3, 1999; Ord. 584 § 5(part), 1983.]

18.42.290 Residential.

The following signs are permitted in all residential zones:

(1) One nonelectrical identification sign per street frontage not exceeding two square feet which contains no more than the name and address of the dweller or tenant of the residence;

(2) One nonelectric identification sign per entrance to a subdivision; providing, that the sign does not exceed 24 square feet in area;

(3) Except in the PR-R zone where a wall sign for a nonresidential use within a mixed-use development may be illuminated, one nonelectric identification sign, not exceeding 24 square feet, per street frontage for nonresidential uses allowed in the residential zones;

(4) Community centers, schools, and churches are permitted one readerboard sign not exceeding 24 square feet, not exceeding eight feet in height;

(5) Temporary signs not exceeding 16 square feet per street frontage for nonresidential uses in a residential zone;

(6) In areas zoned for multiple-family residences, other than duplexes, one nonelectric identification sign not exceeding 24 square feet per street frontage and appropriate to the architectural design and landscape;

(7) In the PR-R zone, on-site real estate signs for the individual dwellings shall be displayed together within or on a sign cabinet or display board. One display cabinet or board shall be allowed per street frontage;

(8) No pole signs shall be permitted and monument signs may not exceed 10 feet in height except by special use permit. No off-premises signs shall be permitted except as authorized by this chapter;

(9) Internally illuminated signs shall be constructed using individual letters/characters, or sign cabinets with an opaque field or background so that only the individual letters/characters are illuminated. [Ord. 1509 § 18, 2011: Ord. 1267 § 5, 2000: Ord. 584 § 5 (A), 1983.]

18.42.300 Neighborhood commercial zones.

The following signs are permitted in the neighborhood commercial zone (N-C) and commercially zoned properties located in the Redondo neighborhood:

(1) One nonelectrical and nonilluminated business identification sign containing no advertising matter more than four square feet in area which is permanently affixed to a wall;

(2) Total sign area for a single business shall not exceed one square foot per lineal foot of street frontage up to a maximum of 100 square feet and freestanding signs may not exceed 40 square feet. No freestanding sign shall exceed the height of the primary use structure;

(3) Revolving signs are prohibited;

(4) Temporary signs are permitted as provided in DMMC 18.42.050;

(5) Projecting signs are prohibited. [Ord. 1509 § 19, 2011: Ord. 1237 § 2, 1999; Ord. 584 § 5 (B), 1983.]

18.42.310 Commercial zones.

The following signs are permitted in the Pacific Ridge commercial zone 1, Pacific Ridge commercial zone 2, business park zone and all commercial zones abutting Pacific Highway South that are not within the Pacific Ridge neighborhood:

(1) Freestanding Signs. For single business properties, multiple-tenant buildings, multiple-building complexes, and shopping centers, freestanding signs are allowed as follows:

(a) Number of Freestanding Signs.

(i) For building sites with up to 300 feet of street frontage, one sign is allowed.

(ii) For building sites with more than 300 feet of street frontage and having more than one vehicular access, two signs are allowed; provided, that the total allowable sign area is not exceeded and the signs are more than 100 feet apart.

(b) Freestanding Sign Size.

(i) Each sign allowed shall not exceed 80 square feet in area.

(ii) For properties with less than 80 feet of street frontage, sign area shall not exceed one square foot of sign area for each lineal foot of street frontage.

(c) Freestanding Sign Height.

(i) For single business properties and multiple business properties, freestanding signs shall not exceed 15 feet in height as measure from median sidewalk grade.

(ii) For shopping centers and multi-building complexes freestanding signs shall not exceed 20 feet in height as measured from median sidewalk grade.

(d) Allowed signs, sign area, or sign height may not be transferred from one street frontage to another.

(e) Off-premises signs, including but not limited to billboards, are prohibited. The city manager or designee may approve monument signs located on a separate parcel of property within a multiple-building complex or shopping center when the following conditions exist.

(i) The multiple-building complex or shopping center appears and functions as one building site; and

(ii) The monument sign appears and functions as an on-premises sign; and

(iii) The approval would not result in additional signs or sign area for the multiple-building complex or shopping center than would otherwise be allowed; and

(iv) All monument and wall signs within the multiple-building complex or shopping center conform to the provisions of this chapter.

(f) Freestanding signs shall not be located on, above, nor project over the public right-of-way.

(2) Wall Signs.

(a) Each single business property is permitted a total sign area not to exceed one square foot per lineal foot of street frontage, up to a maximum of 100 square feet.

(b) Each multiple business property is permitted a total sign area not to exceed 20 square feet plus 40 square feet per licensed business; provided, however, that each business must be guaranteed a minimum of at least 25 square feet signage.

(c) Each multi-building complex and shopping center is permitted a total sign area not to exceed 150 square feet plus 40 square feet per licensed business; provided, however, that each business must be guaranteed a minimum of at least 35 square feet signage.

(d) Except for buildings containing multiple business, wall signage shall not extend horizontally a distance greater than 50 percent of the width of the building wall on which it is displayed.

(e) Allowed wall signage is not transferable from one property to another; except within a shopping center or multi-building complex.

(f) Wall signs shall not be placed higher than 35 feet above median sidewalk grade.

(g) Projecting signs may not project further than six feet from the surface of the building. A right-of-way use permit shall be required for signs projecting over the public right-of-way.

(3) Internally illuminated signs shall be constructed using individual letters/characters, or sign cabinets with an opaque field or background so that only the individual letters/characters are illuminated.

(4) Reader board signs and changeable message center signs are permitted as per the requirements established in DMMC 18.42.220.

(5) Gasoline price signs shall not be located in, nor project over, the public right-of-way and shall not be portable. Such signs may be freestanding or attached to canopy columns. The area of the price sign shall not count towards the allowed total wall or freestanding signage.

(6) Temporary signs shall be permitted as provided in DMMC 18.42.090. [Ord. 1509 § 3, 2011.]

18.42.320 Marina district.

The following signs are permitted on commercially zoned properties within the marina district as established by the Des Moines Comprehensive Plan:

(1) Each public commercial parking lot may have one sign per street frontage not exceeding 24 square feet in sign area.

(2) Reader board signs and changeable message center signs are permitted as per the requirements established in DMMC 18.42.220.

(3) Projecting signs may not project further than six feet from the surface of the building. A right-of-way use permit shall be required for signs projecting over the public right-of-way.

(4) Freestanding signs may not exceed 15 feet in height as measured from the sidewalk grade, and shall not be located on or above, nor project over the public right-of-way.

(5) No more than one freestanding sign is permitted for properties with less than 300 feet of street frontage. Multiple business properties or multi-building complexes with over 300 feet of street frontage and more than one vehicular access are allowed one additional freestanding sign; provided, that the total allowable sign area is not exceeded and the signs are over 100 feet apart.

(6) Each single business property is permitted a total sign area not to exceed two square feet per lineal foot of street frontage, up to a maximum of 200 square feet. Freestanding signs may not exceed 50 square feet.

(7) Each multiple business property or multi-building complex is permitted one freestanding sign not to exceed one square foot per lineal foot of street frontage up to a maximum of 100 square feet. Each business within shall be permitted a wall sign not to exceed one square foot per lineal foot of street frontage; provided, however, that each business must be guaranteed a minimum of at least 24 square feet regardless of street frontage.

(8) Gasoline price signs shall not be located in, nor project over, the public right-of-way, and shall not be hand written. Such signs may be freestanding or attached to canopy columns. The area of the price sign shall not count towards the allowed total wall or freestanding signage.

(9) Temporary signs shall be permitted as provided in DMMC 18.42.050. [Ord. 1509 § 20, 2011: Ord. 584 § 5(D), 1983.]

18.42.325 Business park zone.

Repealed by Ord. 1509. [Ord. 920 § 10, 1991.]

18.42.327 Pacific Ridge commercial zones.

Repealed by Ord. 1509. [Ord. 1267 § 7, 2000.]

ARTICLE VI. ADMINISTRATION AND ENFORCEMENT

18.42.330 Authority of code administrator.

Repealed by Ord. 1509. [Ord. 584 § 6(part), 1983.]

18.42.340 Removal of unlawful signs – Notice.

The city manager or designee may order the removal of any sign erected, installed, or maintained in violation of this chapter.

(1) Signage, General. Any property owner or occupant erecting or maintaining signage not in compliance with the provisions of this chapter, except portable signs which are regulated in subsection (2) of this section, shall be given written notice, by certified letter, specifying the violation and a direction to correct the violation or remove the sign within 30 days. Such notice shall be given to the holder of the sign permit or, if no permit exists, to the named owner of the land where the sign is erected. In the event the violation is not corrected within the 30-day period, the city manager or designee shall thereupon revoke the permit and remove, or cause the removal of the sign, and shall assess all costs and expenses incurred against the named owner of the sign and/or named owner of the land. Any sign which is a source of immediate peril to persons or property may be removed summarily and without notice. Alternatively, this subsection may be enforced pursuant to chapter 18.72 DMMC.

(2) Portable Signage. Portable signage includes any sign not permanently affixed; real estate signs; political signs; portable reader board signs; streamers; pennants; banners; signs attached to or mounted on trees, fences, utility poles, or vehicles parked in proximity to a business with the purpose of attracting attention to such business; or any similar signs. Except as provided for in DMMC 18.42.050(12)(k), portable signs in violation of this chapter located in the right-of-way must be removed upon 24-hour notice. Such notice shall be given by delivering a written notice of violation to the owner, occupant, or person ostensibly in charge or control of the real property upon which the sign is located. Such notice shall state the violation and shall require that the violation be corrected within 24 hours. In the event the violation is not corrected within 24 hours, the city manager or designee shall cause the sign or signs to be impounded. If the portable sign is located off site of the pre-

mises to which the sign reasonably relates, or if ownership of the sign cannot be reasonably determined, no notice of violation shall be provided and the sign shall be impounded forthwith. In the event a sign is removed, there shall be a removal fee and a storage fee as set by administrative order of the city manager. No sign shall be returned until the removal and storage fee is paid in full. The sign shall be stored for not less than 10 days, and thereafter the city manager or designee shall dispose of the sign in any manner. No cause of action shall be maintained against the city for damage to signs properly impounded, whether such damage occurred during the impoundment or storage. A second violation occurring within a 12-month period shall be considered a Class 1 civil infraction. A third violation occurring within a 12-month period shall result in a criminal prosecution and immediate impoundment of the sign without notice. This enforcement provision supersedes the processes contained in DMMC 18.72.060, and provides for immediate prosecution pursuant to DMMC 18.72.070. For such repeat offenses sign alteration or substitution shall be no defense. [Ord. 1509 § 21, 2011: Ord. 791 § 1, 1989: Ord. 584 § 6(A), 1983.]

18.42.350 Nonconforming signs.

(1) Nonconforming signs that were legally and permanently installed prior to May 15, 2011, shall be allowed to continue in use so long as they are continuously maintained, are not relocated, are not structurally altered or made more nonconforming in any way.

(2) Nonconforming off-premises signs shall be abated in accordance with DMMC 18.48.090. [Ord. 1509 § 22, 2011: Ord. 1267 § 8, 2000: Ord. 584 § 6(C), 1983.]

18.42.360 City not liable.

This chapter shall not be construed to relieve from or lessen the responsibility of any person owning, building, altering, constructing, or removing any sign in the city for damages to anyone injured or damaged either in person or property by any defect or action therein, nor shall the city, or any agent thereof, be held as assuming such liability by reason of permit or inspection authorized in this chapter or a certificate of inspection issued by the city or any of its agents. [Ord. 584 § 6(D), 1983.]

18.42.370 Other enforcement.

Repealed by Ord. 1509. [Ord. 584 § 6(B), 1983.]

Chapter 18.43

ELECTRICAL VEHICLE INFRASTRUCTURE

Sections:

18.43.010 Purpose.

The purpose of this chapter is to:

(1) Provide adequate and convenient electric vehicle charging stations to serve the needs of the traveling public;

(2) Provide opportunities for Des Moines residents to have safe and efficient personal electric charging stations located at their place of residence;

(3) Provide the opportunity for commercial and industrial businesses to supply electrical vehicle charging station services to their customers and employees; and

(4) Create standard criteria to encourage and promote safe, efficient, and cost effective electric vehicle charging opportunities in a full range of zones and settings for convenient service to those that use electric vehicles. [Ord. 1517 § 1(1), 2011.]

18.43.020 Definitions.

(1) Use of Words and Phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(3) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.27 RCW and consistent with rules adopted under RCW 19.27.540.

(4) "Charging levels" means the standardized indicators of electrical force, or voltage, at which an electric vehicle's battery is recharged. The terms Level 1, 2, and 3 are the most common EV charging levels, and include the following specifications:

(a) Level 1 is considered slow charging and operates on a 15 to 20 amp breaker on a 120 volt AC circuit.

(b) Level 2 is considered medium charging and operates on a 40 to 100 amp breaker on a 208 or 240 volt AC circuit.

(c) Level 3 is considered "fast" or "rapid" charging and typically operates on a 60 amp or higher breaker on a 480 volt or higher three phase circuit with special grounding equipment. Level 3 stations are primarily for commercial and public applications and are typically characterized by industrial grade electrical outlets that allow for faster recharging of electric vehicles.

(5) "Electric vehicle" means any vehicle that operates, either partially or exclusively, on electrical energy from the grid, or an off-board source, that is stored on-board for motive purpose. "Electric vehicle" includes:

(a) A battery electric vehicle;

(b) A plug-in hybrid electric vehicle;

(c) A neighborhood electric vehicle; and

(d) A medium-speed electric vehicle.

(6) "Electric vehicle charging station" means a public or private parking space that is served by battery charging station equipment for the purpose of transferring electric energy to a battery or other energy storage device in an electric vehicle.

(7) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations,

rapid charging stations, and battery exchange stations.

(8) "Electric vehicle parking space" means any parking space signed or marked exclusively for the parking of an electric vehicle at a battery charging station.

(9) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels and that meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540. [Ord. 1517 § 1(2), 2011.]

18.43.030 Permitted locations.

Levels 1, 2, and 3 electric vehicle charging stations are allowed in all zoning designations. Electric vehicle charging stations are not permitted within the city right-of-way. [Ord. 1517 § 1(3), 2011.]

18.43.040 Compatibility.

For land use compatibility purposes, the charging activity should be proportionate to the associated permitted use. Electric vehicle charging station(s) shall be permitted in association with a single-family use designed to serve the occupants of the home with a Level 1 or 2 charging level. Whereas, charging station(s) installed in a parking lot at a commercial destination, public facility or vehicle service station in close proximity to Interstate 5, are expected to have intensive use and will be permitted to have multiple Level 3 rapid charging stations to serve expected demand. [Ord. 1517 § 1(4), 2011.]

18.43.050 Battery exchange stations.

Battery exchange stations are permitted in any business or commercial use zone; provided, all other requirements for the building or space the use occupies can be satisfied, such as design review, fire code and building code requirements. [Ord. 1517 § 1(5), 2011.]

18.43.060 Electric vehicle charging station requirements.

Electric vehicle charging stations utilizing parking stalls located in parking lots, or parking garages shall comply with the following requirements:

(1) Signage. Each charging station space shall be posted with signage indicating the space is only for electric vehicle charging purposes. Directional signage may be provided to guide motorists to charging station space(s); provided, that directional signs shall be consistent with Manual on Uniform Traffic Control Devices (MUTCD) signs D9-11b and D9-11bP.

(2) Accessibility. The design and location of the charging stations shall comply with the following barrier-free accessibility requirements:

(a) Accessible electric vehicle charging stations shall be provided in the ratios shown on the following table:

Number of EV Charging Stations	Minimum Accessible EV Charging Stations
1 – 50	1
51 – 100	2
101 – 150	3
151 – 200	4
201 – 250	5
251 – 300	6

(b) Accessible electric vehicle charging stations shall be located in close proximity to the building or facility entrance and shall be connected to a barrier-free accessible route of travel.

(c) Accessible electric vehicle charging stations shall comply with the requirements of WAC 51-50-005.

(3) Lighting. Where charging station equipment is installed, site lighting shall be designed to illuminate the station area and posted information and avoid undue glare or reflection on adjoining premises, unless charging is for daytime purposes only.

(4) Charging Station Equipment. Charging station equipment shall comply with the following requirements:

(a) Equipment mounted on pedestals, light posts, or other devices shall be designed

and located as to not impede pedestrian travel or create trip hazards within the right-of-way.

(b) Charging station outlets and connector shall be no less than 36 inches high, or no higher than 48 inches from the top of the surface where mounted and shall contain a retraction device or a place to hang cords and connectors above the ground surface.

(5) Notification. The following information shall be posted on all charging stations:

(a) Voltage and amperage levels;

(b) Hours of operation; and

(c) Usage fees, safety information and contact information for reporting equipment operating problems. [Ord. 1517 § 1(6), 2011.]

18.43.070 Electric vehicle charging station standards.

The city manager or designee is authorized to develop and maintain standards for the design and construction of electric vehicle charging stations. [Ord. 1517 § 1(7), 2011.]

Chapter 18.44

LOADING AREAS AND OFF-STREET PARKING[1]

Sections

18.44.010 Purpose.

It is the purpose of this chapter to specify off-street parking and loading requirements, describing design standards and other required improvements, in order to provide for adequate, convenient, and safe off-street parking

1. Prior legislation: Ords. 175, 193, and 248.

Code reviser's note: DMMC 18.44.095 – 18.44.107 are former DMMC 18.44.100.

and loading areas for the different land uses described in this title. [Ord. 695 § 1, 1987.]

18.44.020 Off-street parking and loading areas required.

Every parking space or facility and vehicle sales areas, trailer sales areas, and boat sales areas, shall be developed, improved, and maintained as provided within this chapter.

(1) Pre-Existing Parking Spaces. A development in existence prior to May 8, 1987, or at the time of its annexation to the city if later, which does not have sufficient parking space on the basis of this section, may continue to operate with the parking deficiency as long as no enlargement or other change is made which would require additional parking spaces.

(2) Off-street parking and loading areas shall be provided as an accessory use in accordance with the provisions of this chapter for every building hereafter erected, altered, enlarged, relocated, or at the time there is a change in its principal use.

(3) When there are alterations or additions to a nonresidential building or when an alteration or addition results in an increase in the number of dwelling units in a multifamily residential structure, off-street parking shall be provided for any increase in the number of dwelling units or increase in gross floor area in accordance with the requirements of DMMC 18.44.060; however, no parking spaces need be provided in the case of an enlargement or expansion where the number of parking spaces required for expansion or enlargement is less than 10 percent of the parking spaces specified for a similar structure. [Ord. 695 § 2, 1987.]

18.44.030 General requirements.

(1) Off-street Parking Development Permit Required. No off-street parking facility or spaces, nor enlargement thereof, shall be constructed without having first secured an off-street parking development permit from the code official; provided, that no such permit shall be required if a building permit is required. Such permit shall be authorized upon the approval of a parking plan as provided in subsection (2) of this section and adherence to the provisions of this chapter and shall be subject to such inspections deemed necessary by the code official to ensure compliance.

(2) Parking Plan Required. Prior to issuance of a building permit for any new building or structure or for the enlargement of the floor area of an existing building or structure, the use of which requires off-street parking facilities to be provided as set forth in this title, and prior to issuance of an off-street parking development permit; a plan of the parking area accurately showing grades and other required design features, shall be approved by the code official.

(3) Compliance Required Prior to Certificate of Occupancy or Issuance of Business License. Parking facilities and traffic-control devices such as parking stripes designating car stalls, directional arrows, etc., as provided in this chapter, shall be installed and completed prior to issuance of an occupancy permit or business license.

(4) Parking Stall Use Restricted – Commercial Zones. Parking stalls shall be used for the temporary parking of motor vehicles only of patrons, personnel, residents, and the like. Parking stalls shall not be used for storage of motor vehicles or materials, signs, sales, repair work, or dismantling of motor vehicles, etc.

(5) Maintenance. Maintenance of all areas provided for off-street parking shall be required and shall include removal and replacement of dead and dying trees, grass, and shrubs, removal of trash and weeds, and repair of traffic-control devices, signs, light standards, fences, walls, surfacing materials, curbs, and railings. [Ord. 695 § 3, 1987.]

18.44.040 Modification of parking provisions.

(1) Number of Spaces. The hearing examiner may, by formal action, waive or modify the number of spaces required, establishing the amount of required parking for uses involving very limited number of employees or which do not require personnel and daily attendance or for which the number of parking spaces proposed is demonstrated sufficient to fully serve the use, is consistent with the intent of this chapter and when strict application of the code would result in unnecessary hardship.

(2) Dimensions. In cases where the strict application of this title would unreasonably limit full utilization of a site for parking, the code official may authorize a reduction of up to three percent of any minimum dimension required in this chapter, except where such reduction would substantially restrict ease of travel or maneuverability of vehicles using the parking facility.

(3) Marina District. The parking provisions for commercial uses established by DMMC 18.44.060 are waived; provided, that there is compliance with all the following standards:

(a) The property is zoned downtown commercial according to the official zoning map.

(b) Residential uses within a mixed-use development are not included in this exemption. Residential uses in a mixed use building shall comply with the requirements established by DMMC 18.44.060.

(c) The property owner shall enter into a no protest agreement regarding the formation of a downtown business or parking improvement district.

(d) This provision is only valid until December 31, 2013. [Ord. 1530 § 1, 2011: Ord. 1475 § 1, 2009: Ord. 1453 § 1, 2009: Ord. 1448 § 1, 2008: Ord. 770 § 62, 1988: Ord. 695 § 4, 1987.]

18.44.050 Parking spaces to serve one use, building, or complex – Exceptions.

(1) Off-street parking facilities approved in conjunction with one use, building, or complex of buildings shall not be considered as providing required parking facilities for any other use, except as hereinafter provided.

(2) Exception for Cooperative Use. Where adjoining parking facilities of two or more land uses can be joined or coordinated to achieve efficiency of vehicular and pedestrian circulation, provision of additional landscaping or usable public open space, economy of space, and a superior grouping of buildings or uses, a reduction of 20 percent of the total combined required parking may be permitted when consistent with the intent of this chapter. The common parking facilities for residential and nonresidential uses within a mixed use development may be included in the Pacific Ridge zone established by chapter 18.31 DMMC. The residential allowance shall not apply to residential land uses within other commercial zones of the city. Where cooperative use is permitted, assignment of parking spaces to individual uses or buildings shall be prohibited.

(3) Exception for Nonconflicting Time in Use. A reduction of up to 50 percent of required parking stalls, except for residential, may be authorized under the following conditions, as long as the total reduction doesn't fall below the levels for residential uses:

(a) The building or use for which application is made to utilize off-street parking facilities provided by another building or use shall be located within 500 feet of such parking facilities and shall be connected by continuous pedestrian walkways or sidewalks to the parking facility.

(b) The applicant must show that there is no substantial conflict in the principal operating hours of the two buildings or uses for which joint use of off-street parking facilities is proposed, i.e., no more than one hour overlap in operating hours exists.

(i) For the purposes of this chapter, the following uses are considered as daytime uses: banks, business offices, retail stores, personal service shops, household equipment or furniture shops, clothing or shoe repair or service shops, manufacturing or wholesale buildings, and other similar primarily daytime uses.

(ii) Nighttime or Sunday uses include: auditoriums incidental to a public or private grade school, churches, bowling alleys, dance halls, theaters, bars, or restaurants, and other similar primarily nighttime uses.

(4) Exemptions granted under the above provisions shall be made after filing with the city a record of covenant or other contract between the cooperating property owners approved by the city attorney. Joint-use privilege shall continue in effect only so long as such agreement, binding on all parties, remains in force. If such agreement becomes legally ineffective due to changed circum-

stances including but not limited to a change in the type or nature of business activities, then parking shall be provided as otherwise required by this chapter.

(5) Nothing in this section shall be construed to prevent cooperative provision of off-street parking facilities for two or more buildings or uses when the total off-street parking is not less than the sum of the required parking facilities for the various uses computed separately. [Ord. 1409 § 1, 2007: Ord. 1267 § 9, 2000: Ord. 695 § 5, 1987.]

18.44.060 Required number of off-street parking spaces.

The minimum number of off-street parking spaces required of each use shall be provided as follows:

(1) Appliance (retail), bakeries, cabinet shops, dry-cleaning, furniture stores, heating services: one parking space per 400 square feet of gross floor area.

(2) Auto and boat sales, new and used: one space per 1,000 square feet of floor space of showroom and service facilities; but in no case shall there be less than six spaces provided.

(3) Day care centers and mini-day care programs: one space for each 10 children or one for each staff member, whichever is greater, and one passenger loading and unloading space for each 20 children.

(4) Hardware and building supplies: one space per 400 square feet of gross floor area.

(5) Industrial and Manufacturing Activities.

(a) Freight terminals and wholesale facilities: one parking space per two employees on a maximum work shift, or one per 1,000 square feet of gross floor area; use whichever is greater.

(b) Manufacturing, including but not limited to the following, except that no retail operations are included: research and testing laboratories, creameries, bottling establishments, bakeries, upholstery shops, printing and engraving shops: two parking spaces for each three employees on a maximum work shift, or one space per 700 square feet of gross floor area; use whichever is greater.

(c) Uncovered storage area: one parking space for each 2,000 square feet of area.

(d) Warehouse and storage: two parking spaces for each three employees or one space for each 1,500 square feet of gross floor area; use whichever is greater.

(6) Laundry, self-service: one parking space per 250 square feet of gross floor area.

(7) Medical Facilities.

(a) Convalescent, rest homes, retirement homes, nursing and health institutions: one parking space for each two employees, plus one space for each four beds.

(b) Hospitals: one parking space for each three beds, plus one parking space for each staff doctor, plus one parking space for each three employees.

(8) Motels, motor hotels, and hotels: one parking space per sleeping unit plus two parking spaces for a resident manager or employees.

(9) Motor vehicle, small engine, and boat repair and services: one parking space for each 600 square feet of gross floor area.

(10) Offices, including professional and business, banks, and related activities: one space per 350 square feet of gross floor area.

(11) Offices not providing customer services on the premises: one space for each 800 square feet of gross floor area.

(12) Personal Services.

(a) C-C zone: one parking space per 300 square feet of gross floor area.

(b) D-C and PR zones: one parking space per 350 square feet of gross floor area.

(c) H-C zone: one parking space per 200 square feet of gross floor area.

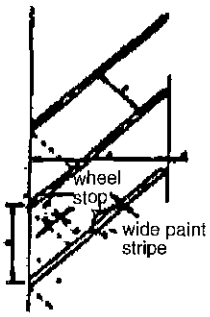
(13) Pleasure craft moorage: one parking space for each two moorage stalls.

(14) Public Assembly and Recreation.

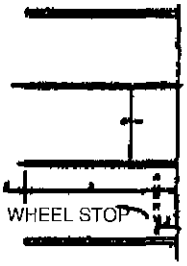
(a) Assembly halls, auditoriums, stadiums, sports arenas, and community clubs: one parking space for every three persons based on occupancy load.

(b) Churches: one parking space per five seats in the principal place of assembly for worship, including balconies and choir loft.

Table 1



ANGLE PARKING



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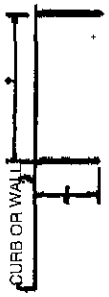

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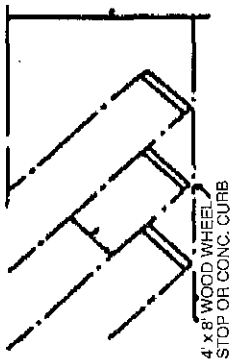
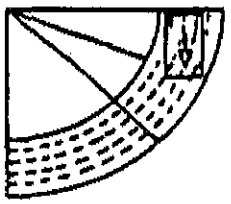
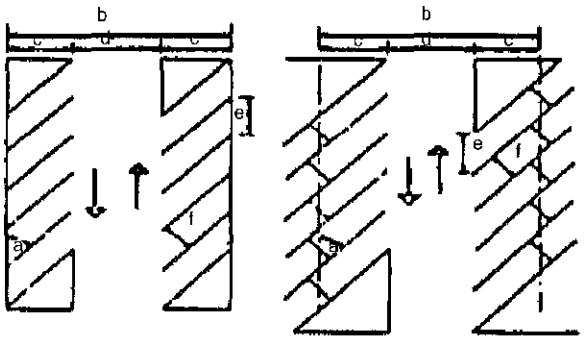


GRAVEL PARKING



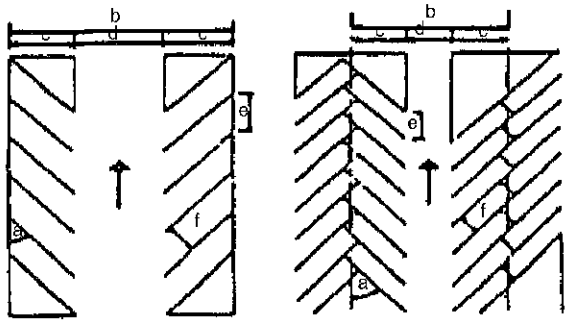
TURNING CLEARANCES

TWO-WAY TRAFFIC



a	b	c	d	e	f	b^1	c^1
Parking Angle	Parking Section Width	Parking Stall Width	Traffic Aisle Width	Curb Length Per Car	Car Stall Width	Parking Section Width	Parking Stall Width
0°	56'	8'	20'	23'	8'		
—	—	—	—	—	—	—	—
35°	56'	18'	20'	14.8'	8.5'	49'	14.5'
40°	57'	18.5'	20'	13.2'	8.5'	50'	15'
45°	58'	19'	20'	12.0'	8.5'	51'	15.5'
50°	59'	19.5'	20'	11.1'	8.5'	53'	16.5'
55°	60'	20'	20'	10.4'	8.5'	55'	17.5'
60°	60'	20'	20'	9.8'	8.5'	55'	17.5'
65°	60'	20'	20'	9.7'	8.8'	56'	18'
70°	60'	20'	20'	9.6'	9'	57'	18.5'
—	—	—	—	—	—	—	—
90°	64'	20'	24'	9'	9'		

ONE-WAY TRAFFIC



a	b	c	d	e	f	b^1	c^1
Parking Angle	Parking Section Width	Parking Stall Width	Traffic Aisle Width	Curb Length Per Car	Car Stall Width	Parking Section Width	Parking Stall Width
0°	28'	8'	12'	23'	8'		
—	—	—	—	—	—	—	—
35°	48'	10'	12'	14.8'	8.5'	41'	14.5'
40°	49'	18.5'	12'	13.2'	8.5'	42'	15'
45°	50'	19'	12'	12.0'	8.5'	43'	15.5'
50°	51'	19.5'	12'	11.1'	8.5'	45'	16.5'
55°	53'	20'	13'	10.4'	8.5'	48'	17.5'
60°	55'	20'	15'	9.8'	8.5'	50'	17.5'
65°	57'	20'	17'	9.7'	8.8'	53'	18'
70°	59'	20'	19'	9.6'	9'	56'	18.5'
—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—

Compact Car Stall Dimensions: minimum 8' x 16', 128 square feet.

18.44.080 Off-site parking.

(1) Use Agreement. Off-site parking areas shall be provided through:

(a) Deed, Easement, or Covenant. The term of such legal agreement shall be at least as long as the reasonable life of the premises served thereby. Evidence shall be provided of such covenant, deed, or other agreement prior to parking plan approval. The document shall be filed with the King County director of records and elections, providing that the area used for parking shall not be diverted or converted to any other use as long as the principal building or use to which the parking is accessory continues to exist; or

(b) Ground Lease. The ground lease shall include a legal description of the area being leased, the purpose of the lease and the terms of the lease and signatures of all parties with an interest in the lease. Evidence of the ground lease must be submitted prior to approval of the parking plan. A copy of the ground lease shall accompany the application for a city business license and all subsequent yearly renewals. If the ground lease expires or is not provided then the city shall deny the business license application or yearly renewal. In order to obtain a new business license after a denial the applicant shall demonstrate that sufficient parking is provided based on the parking requirements effective at the time of the new application either on site or off site through a new easement, deed, covenant, or ground lease.

(2) Off-Site Parking Permitted. The city manager or designee shall have the authority to approve an off-street parking facility; provided, adherence to the following:

(a) Compliance with subsection (1) of this section.

(b) The location of the parking facility off the subject property will conform to the intent and purpose of this chapter, and safe vehicular and pedestrian connections between the parking facility and the principal use exist. Where a distance is specified, such distance shall be the walking distance measured from the nearest point of the parking facilities to the nearest point of the building that such facility is required to serve.

(i) For single-family, duplex, and medium-density multiple dwellings, parking facilities shall be located on the same lot or building site as the building they are required to serve. For townhouse dwellings, parking shall be located not more than 200 feet from the townhouse dwelling it is required to serve, with connecting permanent pedestrian access;

(ii) For high-density and maximum-density multiple dwellings, the parking facilities shall be located on the same site as the dwellings they are required to serve;

(iii) For churches located in a single-family residential, RA-3,600 or RM-2,400 zone, parking facilities shall be located on site; for churches located in any other zone, parking facilities shall be located not farther than 150 feet and not in a single-family residential zone;

(iv) For hospitals, sanitariums, homes for the aged, children's institutions, homes for the retired, nursing and convalescent homes, dormitories, boarding, rooming, and lodging houses, community clubs, and fraternity, sorority, and group student houses, not more than 400 feet from the building they are required to serve; and

(v) For uses other than those specified, parking facilities shall be located not over 600 feet from the building served.

(c) Any parking facility not on the same lot with the principal use to which it is accessory shall be considered, for bulk regulation purposes, a principal use on the lot on which located. [Ord. 1454 § 1, 2009: Ord. 1237 § 4, 1999; Ord. 1197 § 32, 1997; Ord. 695 § 8, 1987.]

18.44.090 Off-street parking facilities location – In-lieu fees in B-C and C-C zones.

Repealed by Ord. 1104. [Ord. 695 § 9, 1987.]

18.44.095 Design requirements.

Any off-street parking facility shall be developed in accordance with the design specifications set forth in DMMC 18.44.096 through 18.44.107. [Ord. 695 § 10(part), 1987.]

18.44.096 Parking area dimensions.

Minimum parking area dimensions for surface and structured parking facilities shall be as provided in Table 1 following DMMC 18.44.070. [Ord. 695 § 10(A), 1987.]

18.44.097 On-site parking facilities location.

In no case shall a motor vehicle or trailer of any kind be parked or stored, nor shall internal aisles or roadways be permitted, in any required yard, open space or landscaped area; provided, however, that the following exceptions shall apply:

(1) Single-Family Dwellings. Parking shall be permitted on a driveway serving indi-

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vidual single-family dwellings provided the driveway maintains a minimum five-foot setback from an interior lot line, a 20-foot setback from any alley right-of-way parallel to the driveway (except where access to the driveway is from the alley), a 25-foot setback from any street right-of-way parallel to the driveway, and a 45-foot setback from any arterial street right-of-way parallel to the driveway; provided further, however, that with regard to the 45-foot setback from arterial streets the community development director upon consultation with the public works director shall be authorized to permit the location of a driveway at a point less than 45 feet but not less than 25 feet from an arterial street where the size of the lot is such that the 45-foot requirement is impractical; and provided further, that no driveway in which parking is permitted may be located under this subsection where in the professional opinion of the community development director upon consultation with the public works director, documented in writing, dangerous traffic conditions may result.

(2) Duplexes. Parking shall be permitted on driveways serving a duplex constructed on a single lot, except in planned unit developments; provided, that the driveways shall have a maximum width of 24 feet at their intersections with the street; that the width of all driveways serving a particular lot shall consist of not more than 40 percent of the lot frontage footage; that the driveways maintain a 20-foot setback from any alley right-of-way parallel to the driveway (except where access to the driveway is from the alley), a 25-foot setback from any street right-of-way parallel to the driveway, and a 45-foot setback from any arterial right-of-way street parallel to the driveway; provided further, however, that with regard to the 45-foot setback from arterial streets the community development director upon consultation with the public works director shall be authorized to permit the location of the driveway at a point less than 45 feet but not less than 25 feet from an arterial street where the size of the lot is such that the 45-foot requirement is impractical; and provided further, that no driveway in which parking is permitted may be located under this subsection where in the professional opinion of the community development director upon consultation with the public works director, documented in writing, dangerous traffic conditions may result.

(3) Townhouse Dwellings. Parking shall be permitted on a driveway serving one or more townhouse dwellings provided the driveway has a maximum width of 24 feet at its intersection with the street, a minimum 20-foot setback from any alley right-of-way parallel to the driveway (except where access to the driveway is from the alley), a 25-foot setback from any street right-of-way parallel to the driveway, and a 45-foot setback from any arterial street right-of-way parallel to the driveway; provided further, however, that with regard to the 45-foot setback from arterial streets the community development director upon consultation with the public works director shall be authorized to permit the location of a driveway at a point less than 45 feet but not less than 25 feet from an arterial street where the size of the lot is such that the 45-foot requirement is impractical; and provided further, that no driveway in which parking is permitted may be located under this subsection where in the professional opinion of the community development director upon consultation with the public works director, documented in writing, dangerous traffic conditions may result. [Ord. 1197 § 33, 1997; Ord. 800 § 1, 1989: Ord. 695 § 10(B), 1987.]

18.44.098 Parking area and parking area entrance and exit slopes.

In order to encourage the construction of usable, convenient, and safe parking areas, a maximum pavement slope of five percent shall be permitted. A maximum slope of 14 percent shall be permitted for driveways or aisles between separated parking areas. The long dimension of a parking stall shall be generally parallel to ground contours. If existing ground slopes in a proposed parking area exceed 10 percent, the code official may require the submission of a topographic survey showing existing and proposed contours. Parking lots depressed two or three feet below the level of the street shall be encouraged wherever possi-

ble. Plans for adequate drainage shall be approved by the public works director. [Ord. 695 § 10(C), 1987.]

18.44.099 Driveways and maneuverability.

(1) Adequate ingress to and from each parking space shall be provided without moving another vehicle and without backing more than 50 feet. All parking spaces shall be so arranged that ingress and egress is possible without backing over a sidewalk or walkway/bicycle area unless specifically approved by the community development director upon consultation with the public works director.

(2) Turning and maneuvering space shall be located entirely on private property except that the usable portion of an alley may be credited as aisle space subject to approval as to safety by the community development director upon consultation with the public works director.

(3) Backing onto public streets to exit a parking stall shall be prohibited, except in single-family residential and RA zones.

(4) When off-street parking is provided in the rear of a building and a driveway lane alongside the building provides access to the rear parking area, such driveway shall require a minimum width of 12 feet and a sidewalk of at least a three-foot section, adjoining the building, curbed or raised six inches above the driveway surface.

(5) Ingress and egress to any off-street parking lot shall not be located closer than 20 feet from point of tangent to an intersection or crosswalk. They may not be permitted where, in the opinion of the community development director upon consultation with the public works director, dangerous or confusing traffic patterns would result.

(6) Driveway intersections with north-south bearing streets shall be minimized to the extent possible in order to diminish traffic hazards, to conserve space and to promote orderly development generally. Driveways shall be limited to one per building site per street frontage, except the lesser of one driveway for each 150 feet of street frontage or three driveways for two lots having common parking may be permitted upon a finding of the community development director upon consultation with the public works director that smoother or safer flow of traffic can result without significant disruption of the streetscape. [Ord. 1237 § 4, 1999; Ord. 1197 § 34, 1997; Ord. 695 § 10(D), 1987.]

18.44.100 Surface.[1]

(1) The surface of any required off-street parking or loading facility and accessory accessways (driveways) shall be paved with asphalt or concrete to a standard comparable to the standard for the public street providing access thereto and shall be graded and drained as to dispose of all surface water, but shall not drain across sidewalks.

(2) Paved parking areas except in single-family residential zones shall use paint or similar devices to delineate car stalls and direction of traffic.

(3) Pedestrian walks, used for the use of foot traffic only, shall be curbed or raised six inches above the lot surface. All pedestrian walks shall be conspicuously delineated.

(4) Wheel stops shall be required to protect landscaping and to prevent vehicles from striking buildings, overhanging walkways, property lines, or other limits of a parking facility. Wheel stops shall be installed a minimum of two feet from the end of parking stalls, except in single-family residential zones. [Ord. 695 § 10(E), 1987.]

18.44.101 Lighting.

Any lighting on a parking lot shall illuminate only the parking lot, and be designed to avoid undue glare or reflection on adjoining premises, including public streets. Where a common boundary is shared with any residential property, illuminating devices shall be so shaped and directed to play their light away from residential property. Parking lot lighting shall not exceed 14 feet in height. [Ord. 1237 § 4, 1999; Ord. 695 § 10(F), 1987.]

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1. Code reviser's note: Former DMMC 18.44.100 has been recodified as DMMC 18.44.095 – 18.44.107.

18.44.102 Curb cuts.

All parking facilities shall have specific entrance and/or exit areas to a street or alley. Access roads and curb cuts shall be minimized and shall not exceed 24 feet in width for combined ingress/egress points and 12 feet for one-way entrances or exits unless recommended by the public works director to facilitate left turn lanes or otherwise foster safe movement of vehicles and upon a finding that pedestrian safety is not adversely affected. [Ord. 695 § 10(G), 1987.]

18.44.103 Vehicle circulation between adjoining properties required.

Parking lots shall be designed to provide for off-street vehicle circulation to adjoining properties and parking areas where physically feasible. [Ord. 695 § 10(H), 1987.]

18.44.104 Obstructions.

No obstruction which would restrict car door opening shall be permitted within five feet of the centerline of a parking space. [Ord. 695 § 10(I), 1987.]

18.44.105 Landscaping and screening.

Landscaping and screening shall be provided in accordance with chapter 18.41 DMMC. [Ord. 695 § 10(J), 1987.]

18.44.106 Walkways required.

Marked walkways, separated from traffic lanes and vehicle overhangs, shall be provided from parking areas to the entrances of establishments and from parking areas to right-of-way sidewalks/ walkways. [Ord. 695 § 10(K), 1987.]

18.44.107 Parking for the handicapped.

Parking and access for physically handicapped shall be provided in accordance with Section 7503 of the regulations adopted pursu-

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ant to chapter 19.27 RCW (State Building Code), chapter 70.92 RCW (Public Buildings – Provision for Aged and Handicapped), and RCW 46.61.581. [Ord. 695 § 10(L), 1987.]

18.44.110 Parking and storage of recreational, utility, and commercial vehicles in residential neighborhoods.

(1) Exemptions. Pickup or light trucks, 10,000 pounds gross weight or less and not exceeding 20 feet in length or 7.5 feet in width, with or without a mounted camper unit, which are primarily used by the property owner for transportation purposes are exempt from this subsection.

(2) Recreational and utility vehicles are defined as travel trailers, folding tent trailers, motor homes, truck campers removed from a truck or pickup, horse trailers, boat trailers with or without boats, and utility trailers. Recreational and utility vehicles may be parked in residential areas provided the following conditions are met:

(a) Vehicles shall not intrude into public rights-of-way or obstruct sight visibility from adjacent driveways.

(b) Vehicles shall not be parked in the front building setback unless there is no reasonable access to the building side yards or rear yards because of topography or other physical conditions of the site.

(c) Vehicles shall be maintained in a clean, well-kept state which does not detract from the appearance of the surrounding area.

(d) At no time shall parked or stored vehicles be occupied or used as a permanent or temporary dwelling units except that guests may reside in a recreational vehicle on the host's premises on a temporary basis.

(3) Truck Tractors, Trailers, and Large Commercial Vehicles. Parking of commercial vehicles over 10,000 pounds gross weight, exceeding 20 feet in length and/or 7.5 feet in width, is prohibited in residential areas, except on a temporary and nonregular basis not exceeding six hours when sight visibility is not obstructed. [Ord. 695 § 11, 1987.]

18.44.120 Required loading areas.

(1) Every department store, freight terminal or railroad yard, hospital or sanitarium, industrial or manufacturing establishment, retail or wholesale store or storage warehouse establishment, or any similar use, which has or is intended to have an aggregate gross floor area of 10,000 square feet or more, shall provide truck loading or unloading berths in accordance with the following table:

Square Feet of Aggregate Gross Floor Area	Required Number of Berths
10,000 up to and including 16,000	1
16,001 up to and including 40,000	2
40,001 up to and including 64,000	3
64,001 up to and including 96,000	4
96,001 up to and including 128,000	5
128,001 up to and including 160,000	6
160,001 up to and including 196,000	7
For each additional 36,000	1 additional

(2) Every auditorium, convention hall, exhibition hall, sports arena, hotel, office building, restaurant, or any similar use, which has or is intended to have an aggregate gross floor area of 40,000 square feet or more, shall provide off-street truck loading or unloading berths in accordance with the following table:

Square Feet of Aggregate Gross Floor Area	Required Number of Berths
40,000 up to and including 60,000	1
60,001 up to and including 160,000	2
160,001 up to and including 264,000	3
264,001 up to and including 388,000	4
388,001 up to and including 520,000	5
520,001 up to and including 652,000	6
652,001 up to and including 784,000	7
784,001 up to and including 920,000	8
For each additional 140,000	1 additional

(3) Each loading space shall measure not less than 30 feet by 12 feet, and shall have an unobstructed height of 14 feet 6 inches, shall be made permanently available for such purpose, and shall be surfaced, improved, and maintained as required. Such facilities shall be located so that trucks using the loading space do not interfere with areas reserved for off-street parking nor project into any public right-of-way or off site, or be situated along any

street frontage, and shall be adjacent to the building to be served thereby.

(4) Any floor area provided by additions to or structural alterations to a building shall be provided with loading space or spaces as set forth in this chapter whether or not loading spaces have been provided for the original floor space. [Ord. 695 § 12, 1987.]

18.44.130 Code official.

The code official is the city manager or his/her designated representative. [Ord. 695 § 13, 1987.]

18.44.140 Enforcement.

Enforcement of the parking requirements contained in this chapter for new construction, alterations to a structure, or change in principal use, shall be in accordance with the enforcement sections of the buildings and construction code (Title 14 DMMC) or the provisions of the DMMC regulating business licenses (chapter 5.04 DMMC), as the case may be. [Ord. 695 § 14, 1987.]

Chapter 18.45

MULTIFAMILY RECREATION AREAS

Sections

18.45.010 Purpose.

This chapter is intended to provide recreation areas for residents of multifamily developments, to separate such areas from automobile-oriented areas, and to enhance the quality of multifamily residential developments, thus promoting the public health, safety, and welfare of the community of Des Moines. [Ord. 901 § 7, 1991.]

18.45.020 Minimum area required.

(1) Common Recreation Areas. Each multifamily building or complex of four or more units shall provide a minimum area of 200 square feet of common recreation space per dwelling unit, including those used by the owner or building management personnel. The common recreation area(s) shall be available to all residents of the building/complex. Not more than 50 percent of the required recreation area shall be indoors. Common recreation areas shall include fixtures and facilities, as approved by the community development director, that promote passive and/or active recreational activities.

(2) Private Recreation Areas. A minimum of 60 square feet of private outdoor recreation area shall be provided for each dwelling unit. The minimum dimension of any private recreation area shall be six feet. Required private recreation areas shall be adjacent to, and directly accessible from, the corresponding dwelling unit. [Ord. 901 § 8, 1991.]

18.45.030 Play space for preadolescent children.

At least 50 percent of the required common recreation area shall be designed and improved as play space for preadolescent children. For the purposes of this chapter, play spaces for preadolescent children mean environments designed to support and suggest activities that are an essential part of a child's learning and development (social, emotional, cognitive, and physical). Each play space shall include at least two play equipment fixtures, and at least one adult seating area as approved by the community development director. Play equipment fixtures include, but are not limited to, sand boxes, slides, swing sets, cargo net play equipment, horizontal overhead ladders, and similar features. All play areas and equipment shall conform to the design, installation, and maintenance guidelines described in the King County Division of Parks and Recreation "Play Area Design and Inspection Handbook." The community development director may approve a reduction in the percentage of common recreation area that must be designed and improved as play space for children where the applicant can demonstrate to the director's satisfaction that few or no children will reside in the development. In considering approval of such reduction, the director may consider items such as:

(1) Number of bedrooms per dwelling unit, and the total number of bedrooms proposed;

(2) Location of the development site; and

(3) Availability of nearby public play space for children. [Ord. 901 § 9, 1991.]

18.45.040 General provisions.

(1) Where the required common area is less than 3,000 square feet, the common outdoor space shall be concentrated in one area. The common recreation area shall be at least 25 feet in width. Where the required common area is 3,000 square feet or more, the space may be divided among multiple areas; provided, that at least one recreation area is a minimum of 2,000 square feet in area with a minimum width of 25 feet. All other areas shall be at least 1,000 square feet in area with a minimum width of 10 feet.

(2) No part of a required recreation area may be used for driveways, parking, or other vehicular use. Adequate fence and plant screening, as approved by the community development director, shall separate outdoor recreation areas from vehicular areas.

(3) Required recreation areas may not be located in undevelopable buffer areas required in chapter 18.86 DMMC.

(4) The required front yard area shall not be counted toward satisfying the common recreation area requirement. The side and rear yard areas may be counted toward recreation area requirements if the design satisfies the purpose and intent of this chapter, without resulting in adverse impacts upon nearby properties. Active recreation areas are not permitted where the activity would adversely impact required on-site landscaping.

(5) Unless otherwise approved by the community development director, required play spaces for children shall be accessible from all on-site dwellings by pedestrian paths separate from vehicular areas.

(6) The provisions of DMMC 18.45.030 shall not apply to senior citizen housing developments, such as continuing care retirement communities, nursing homes, respite care facilities, and retirement housing developments, and other developments not required by law to accept children as residents.

(7) The required private and common recreation areas shall be designated on development plans reviewed by the community development department. The property owners and/or responsible parties shall maintain the required recreation areas for the life of the project.

(8) A subdivision or planned unit development containing several multifamily residential lots, and multifamily developments which are built in phases, shall provide on-site recreation facilities for each phase or shall provide the total amount of required recreation area in the first phase of construction. [Ord. 901 §10, 1991.]

18.45.050 In-lieu cash contribution.

Where the size of the development site is insufficient to provide a quality common recreation area, or the improvement of city park

facilities in the vicinity will be of greater benefit to the residents of the proposed dwellings, the community development director may allow the applicant to make a voluntary payment to the city in lieu of providing the required on-site common recreation facilities. Acceptance of such a voluntary contribution is discretionary on the part of the city. Such payments shall be placed in a neighborhood park fund to be used for capital improvements in existing parks, or for the development of new parks in the vicinity of the development site. The administration of in-lieu contributions, including any refund of the contribution, shall comply with the provisions of chapter 82.02 RCW as hereafter amended. The amount of payment shall be based upon the current assessed value (as determined by the county assessor) of the entire development site. The amount of in-lieu contribution shall be as follows:

Required common recreation area minus (-) provided common recreation area equals (=) X

X/site area = Y

Assessed value multiplied by Y = In-lieu contribution

[Ord. 901 § 11, 1991.]

18.45.060 King County Division of Parks and Recreation Play Area Design and Inspection Handbook.

Pursuant to RCW 35.21.180 the King County Division of Parks and Recreation "Play Area Design and Inspection Handbook," including all subsequent revisions, is adopted by reference. A current copy of the King County Division of Parks and Recreation "Play Area Design and Inspection Handbook" adopted by reference in this section shall be maintained on file in the office of the community development director and shall be available for public inspection. [Ord. 901 § 12, 1991.]

Chapter 18.48

NONCONFORMING BUILDINGS AND USES

Sections

18.48.010 Regulations subject to chapter.

The foregoing regulations of this title shall be subject to the general provisions, conditions, and exceptions contained in this chapter. [Ord. 175 § 1(24.52.010), 1964.]

18.48.020 Application of chapter to nonconforming uses and buildings resulting from classification, reclassification, variances, and conditional use permits.

The provisions of this chapter shall apply to buildings, structures, land, and uses which

become nonconforming as a result of the application of this title to them, or from classification or reclassification of the property under this title or any subsequent amendments thereto. If a use originally authorized by a variance, conditional use permit, or other valid use permit prior to August 3, 1964, is located within a zone in which such use is not permitted by the terms of this title, such use shall be a nonconforming use. Uses validly established prior to August 3, 1964, shall not be deemed nonconforming only because of failure to secure a conditional use permit required under this title. [Ord. 175 § 1(24.52.020), 1964.]

18.48.030 Effect of removal or destruction of nonconforming buildings.

(1) Except as provided in subsection (2) of this section, if any nonconforming building is, in the judgment of the community development director, removed, destroyed by means to an extent of more than 50 percent of its replacement cost at time of destruction, every future building constructed, reconstructed or otherwise permitted to remain on the land on which the building was located shall conform to the provisions of this title. In order for the provisions of this section to apply, the community development director must first issue written notice to owners of property deemed to be subject to the provisions of this section. The community development director's determination to issue such notice shall be considered a Type I land use action, which is subject to appeal to the hearing examiner as provided in this title.

(2) Reconstruction Conditions for Nonconforming Single-Family and Condominium-Residential Buildings. In any residential zone, nonconforming single-family residential buildings and condominiums destroyed by catastrophe or disaster such as fire, explosion, earthquake, flooding, etc., may be reconstructed as existed prior to the catastrophic event, subject to the following limitations:

(a) This subsection (2) shall not apply to reconstruction necessitated by a criminal act involving the property owner, including but not limited to arson.

(b) Reconstructed building height and lot coverage shall not exceed pre-existing height and lot coverage or the provisions of this title, whichever is greater.

(c) Reconstructed yard areas shall not be less than pre-existing yards or the provisions of this title, whichever is less.

(d) When new building area is proposed in addition to reconstruction of a nonconforming building, the new building area shall conform to the provisions of this title.

(e) Reconstructed building area shall conform to the requirements of DMMC Title 14 (Buildings and Construction). [Ord. 1240 § 1, 1999: Ord. 1182 § 5, 1997; Ord. 175 § 1(24.52.030), 1964.]

18.48.040 Reconstruction of buildings partially destroyed or damaged.

(1) Except as provided in subsection (2) of this section, a nonconforming building damaged or partially destroyed to the extent of not more than 50 percent of its market value at the time of its destruction by fire, explosion, or other casualty or act of God or the public enemy, may be restored and the occupancy or use of such building or part thereof which existed at the time of such partial destruction or damage may be continued subject to all other provisions of this chapter.

(2) In a single-family residential zone, nonconforming single-family residential buildings partially destroyed by catastrophe or disaster such as fire, explosion, earthquake, flooding, etc. may be reconstructed as existed prior to the catastrophic event, subject to the following limitations:

(a) This subsection shall not apply to reconstruction voluntarily initiated by the property owner.

(b) Reconstructed building height and lot coverage shall not exceed pre-existing height and lot coverage or the provisions of this title, whichever is greater.

(c) Reconstructed yard areas shall not be less than pre-exisiting yards or the provisions of this title, whichever is less.

(d) When new building area is proposed in addition to partial reconstruction of a nonconforming building, the new building

area shall conform to the provisions of this title.

(e) Reconstructed building area shall conform to the requirements of Title 14 DMMC (Buildings and Construction). [Ord. 1237 § 4, 1999; Ord. 1182 § 6, 1997; Ord. 175 § 1(24.52.040), 1964.]

18.48.050 Structural alteration or enlargement of nonconforming buildings.

(1) Unless otherwise specifically provided in this title, nonconforming buildings may not be enlarged or structurally altered unless an enlargement or structural alteration makes the building more conforming, or is required by law; however, where a building or buildings and customary accessory buildings are nonconforming only by reason of substandard yards, open spaces, area, or height, the provisions of this title prohibiting structural alterations or enlargements shall not apply; provided, any structural alterations or enlargements of an existing building under such circumstances shall not increase the degree of nonconformity and any enlargements or new buildings and structures shall observe the yards and open spaces required.

(2) Structural alterations may be permitted if necessary to adapt a nonconforming building to new technologies or equipment pertaining to uses housed in such building. Any enlargement necessary to adapt to new technologies shall be authorized only by a variance.

(3) Upkeep, repairing, and maintenance of nonconforming buildings is permitted. [Ord. 175 § 1(24.52.050), 1964.]

18.48.060 Required conformance of existing uses required to be in entirely enclosed building.

Where this title requires a use to be contained within an entirely enclosed building as such term is defined in this title, and a use existing on August 3, 1964, is not in an entirely enclosed building, the building or structure containing such use shall be made to conform to the requirements of this title with respect to such enclosure within a period of not more than three years from the date of notification as required in DMMC 18.48.090. [Ord. 175 § 1(24.52.060), 1964.]

18.48.070 Required conformance to exterior improvements.

Where a use exists on August 3, 1964, and such use is nonconforming only because it does not meet the requirements of this title with respect to improvement of outside areas used for storage, parking, or outside activities, or if the property on which any use is located has a property line common with residential property and no wall, fence, or hedge exists on such property line where required by this title, such use shall be made to conform to the requirements of this title with respect to such features within a period of not to exceed two years from the date of notification as required in DMMC 18.48.090. [Ord. 1237 § 4, 1999; Ord. 175 § 1(24.52.070), 1964.]

18.48.080 Continuation of nonconforming use in a nonconforming building.

(1) A nonconforming use in a nonconforming building may be continued, and may be expanded or extended throughout such building so long as such nonconforming building remains nonconforming; provided, no structural alterations or additions are made except those that may be required by law or which are specifically permitted in this chapter. A nonconforming use in a nonconforming building may be changed to another use of the same or more conforming zone.

(2) The permission to continue the nonconforming use in a nonconforming building shall not apply where the building is nonconforming only by reason of substandard yards, open space, area, or height, in which case the use shall be abated in the same manner as provided in DMMC 18.48.090. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.52.080), 1964.]

18.48.090 Abatement of nonconforming uses.

Nonconforming uses of land, buildings, or structures shall be subject to abatement as follows:

(1) By resolution of the city council, the hearing examiner shall be directed to conduct a public hearing, which shall be evidentiary in nature, to take testimony relative to abatement schedules for any class of nonconforming use. The hearing examiner shall schedule a public hearing within 45 days of receipt of such resolution. Notice of the public hearing shall be given by publication in the official newspaper of the city not less than 15 days prior to the scheduled hearing date and by mailing an appropriate notice, by certified mail, within 15 days of the hearing date to the owner of record and to the occupant/tenant of real property which may be affected by the proceedings. Thereafter, the hearing examiner shall conduct a public hearing and evidentiary hearing in general conformity with the hearing examiner code. At the conclusion of the hearing, the hearing examiner shall transmit findings and recommendations to the city council. Such findings and recommendations shall be based on the factors described in subsection (3) of this section.

(2) Upon receipt of the findings and recommendations of the hearing examiner, the city council shall set a public hearing to consider the issue, giving again such public notice as is described in subsection (1) of this section. Abatement proceedings shall not be subject to the one open record public hearing requirement for a proposed land use action specified in chapter 18.56 DMMC (Land use review procedures). All persons wishing to be heard shall be heard; provided, however, testimony and evidence may not go beyond the scope of that presented to the hearing examiner. Following such public hearing, the city council shall adopt by ordinance an appropriate abatement period for the nonconforming use.

(3) The period of abatement for a nonconforming use shall be determined by providing a sufficient residue of reasonable use through "amortization of nonconforming uses." Factors that may be considered in establishing the abatement period through amortization are investment of the property owner, estimated remaining economic life of investment, depreciated value from federal income tax records, value and condition of the improvement, nature of the use, possibility of alternative uses that conform or that are more conforming, degree of incompatibility of the use with current zoning, impact of the use on other uses in the area where it is located, existence or nonexistence of a lease and contingency clauses permitting lease termination, and such other factors that tend to permit the nonconforming user to amortize investment during the period of permitted nonconformity, bearing in mind that the public interest in eliminating undesirable nonconforming uses is sufficient to justify the reduction of property value. [Ord. 1174 § 61, 1996; Ord. 794 § 1, 1989: Ord. 175 § 1(24.52.090), 1964.]

18.48.100 Nonconforming churches may alter or expand.

Nonconforming churches may be structurally altered or enlarged; provided, the requirements of this title for off-street parking shall be met and maintained for any seating capacity in excess of that which existed immediately prior to the alterations or additions whether provided by additional seats in the nave or by additional floor space to be used simultaneously for assembly purposes if there are no fixed seats. [Ord. 175 § 1(24.52.100), 1964.]

18.48.110 Abatement of nonconforming use.

Repealed by Ord. 794. [Ord. 175 § 1(24.52.110), 1964.]

18.48.120 Residences and dwelling units in commercial zones nonconforming.

Residential buildings and buildings containing dwelling units on the ground floor existing in commercial zones on August 3, 1964, shall be considered as nonconforming buildings but, as such, shall be subject only to those provisions of this chapter pertaining to abatement which provide that a nonconforming building removed or destroyed shall not be replaced by other than a conforming building, that the nonconforming building may not be enlarged or expanded unless such enlargement or expansion makes the building more conforming, and that the degree of nonconformity

may not be increased by changing to a less restrictive residential use. [Ord. 1237 § 4, 1999; Ord. 175 § 1(24.52.120), 1964.]

18.48.125 Dwelling units in commercial zones nonconforming.

Dwelling units in commercial zones existing on February 4, 1985, shall be considered nonconforming uses and shall be subject to DMMC 18.48.120, governing nonconforming residential uses in commercial zones; provided, however, should any dwelling unit or building containing a dwelling unit be damaged or destroyed by fire, explosion, or other casualty or act of God or the public enemy, it may be restored and the occupancy or use which existed at the time of such damage or destruction may be continued. [Ord. 617 § 8, 1985.]

18.48.130 Notice of abatement or conformance.

Repealed by Ord. 794. [Ord. 770 § 63, 1988: Ord. 175 § 1(24.52.130), 1964.]

18.48.140 Abatement time extension.

Repealed by Ord. 794. [Ord. 770 § 64, 1988: Ord. 175 § 1(24.52.140), 1964.]

Chapter 18.52

PLANNED UNIT DEVELOPMENT

Sections

18.52.010 Purpose of planned unit development.

Wherein the zoning map establishes only zone boundaries and the text of this title establishes the permitted use of land in the various zones and the conditions applicable to such use, and wherein all of the provisions, conditions, and requirements set forth in this title are in general, designed to apply to individual lots and minimum area parcels, a planned unit development, as the term is employed in this title has the following purposes:

(1) To produce a development which would be as good or better than that resulting from the traditional lot by lot development, by applying to large areas, whether consisting of consolidated lots or unsubdivided property, the same principles and purposes inherent in the required provisions applying to individual lots or minimum area parcels;

(2) To correlate comprehensively the provisions of this title and other ordinances and codes of the city, to permit developments which will provide a desirable and stable envi-

ronment in harmony with that of the surrounding area;

(3) To permit flexibility that will encourage a more creative approach in the development of land, and will result in a more efficient, aesthetic, and desirable use of open area, while at the same time, maintaining substantially the same population density and area coverage permitted in the zone in which the project is located;

(4) To permit flexibility in design, placement of buildings, use of open spaces, circulation facilities, off-street parking areas, and to best utilize the potentials of sites characterized by special features of geography, topography, size, or shape. [Ord. 1197 § 14, 1997; Ord. 175 § 1(24.56.010), 1964.]

18.52.020 Initiation of planned unit development projects.

Planned unit development projects may be initiated by:

(1) The owner of all the property involved, if under one ownership; or

(2) An application filed jointly by all owners having title to all of the property in the area proposed for the planned development project, if there is more than one owner; or

(3) A governmental agency. [Ord. 175 § 1(24.56.020), 1964.]

18.52.030 Procedure for approval of planned unit development projects.

(1) Applications for planned unit developments shall be processed in accordance with review procedures for subdivisions as specified in chapter 17.16 DMMC (Subdivisions).

(2) The planned unit development resulting from the application of the provisions of this section shall be made a part of the zoning map, identified thereon by appropriate reference to the detailed planned unit development map and explanatory text (if any) either by number or by symbol and constitute a limitation on the use and design of the site. [Ord. 1174 § 62, 1996; Ord. 222 § 2, 1967: Ord. 175 § 1(24.56.030), 1964.]

18.52.040 Expiration.

Upon the abandonment of a particular project authorized under this chapter or upon the expiration of three years from the final approval of a planned unit development which has not by then been completed (or commenced with an extension of time for completion granted), the authorization shall expire and the land and the structures thereon may be used only for a lawful purpose permissible within the zone in which the planned unit development is located. [Ord. 175 § 1(24.56.040), 1964.]

18.52.050 Form of and contents of applications and types of information required.

(1) The community development department shall prescribe the form on which applications are made for planned unit development projects. It may prepare and provide blanks for such purpose and prescribe the type of information to be provided in the application by the applicant.

No application shall be determined to be complete unless it complies with the requirements.

(2) Application for planned unit development approval shall contain the information specified in DMMC 17.40.010 (Application materials – Short subdivisions, preliminary subdivisions, binding site plans, plat alterations, and plat vacations) and DMMC 17.40.020 (Application materials – Public notice).

(3) An accompanying explanatory text shall provide a written statement of the general purposes of the project and an explanation of all features pertaining to uses and other pertinent matters not readily identifiable in map form. The adoption of the text specifying the particular nonresidential uses permitted to locate on the site, if any, shall constitute a limitation to those specific uses. [Ord. 1197 § 15, 1997; Ord. 770 § 65, 1988: Ord. 222 § 3, 1967; Ord. 175 § 1(24.56.050), 1964.]

18.52.060 Permitted location of planned unit development projects.

(1) Residential planned unit development projects may locate only in single-family residential, RA, and multifamily residential zones when processed and authorized as provided in this chapter.

(2) Planned unit developments for other than residential uses may locate only in zones first permitting the heaviest use locating on the premises.

(3) The major internal street serving the planned unit development project in an RA or more intensive zone shall be functionally connected to a local/access street or higher-capacity roadway as defined by the Greater Des Moines Comprehensive Plan. [Ord. 1237 § 4, 1999; Ord. 1197 § 16, 1997; Ord. 222 § 4, 1967; Ord. 175 § 1(24.56.060), 1964.]

18.52.070 Required minimum site area.

A planned unit development project shall contain an area of not less than five times the minimum lot area per dwelling unit of the underlying zone. [Ord. 1197 § 17, 1997; Ord. 222 § 5, 1967: Ord. 175 § 1(24.56.070), 1964.]

18.52.080 Uses permitted.

In a planned unit development only the following uses are permitted:

(1) In a residential planned unit development:

(a) Residential units, either detached or in multiple dwellings;

(b) Accessory incidental retail and other nonresidential uses may be specifically and selectively authorized as to exact type and size to be integrated into the project by design, accessory retail uses to serve only as a convenience to the inhabitants of the project;

(c) Recreational facilities including but not limited to, tennis courts, swimming pools, and playgrounds;

(d) Schools, libraries, and community halls;

(2) In planned unit developments for other than residential uses, uses shall be limited to those permitted by the zone in which the use is located. [Ord. 175 § 1(24.56.080), 1964.]

18.52.090 Use control in planned unit developments.

Repealed by Ord. 1197. [Ord. 222 § 6, 1967; Ord. 175 § 1(24.56.090), 1964.]

18.52.100 Permissive variations in requirements.

In considering a proposed planned unit development project the approval thereof may involve modifications in the regulations, requirements, and standards of the zone in which the project is located so as to appropriately apply such regulations, requirements, and standards to the larger site. In modifying such regulations, requirements, and standards as they may apply to a planned unit development project, the following limitations shall apply:

(1) Placement of Buildings. The required yards, on-site landscaping, and open spaces and the height of the buildings involved shall dictate the location of buildings and structures within the planned unit development;

(2) Yards. Unless alternative yard areas are authorized with approval of a planned unit development, the requirements for front yards for the underlying zone shall apply to all perimeter lines of the site. In no circumstance shall yards as measured from perimeter lot lines of the planned unit development be less than 10 feet from the front and five feet from the side and rear lot lines;

(3) Open Spaces. The distance between buildings containing dwelling units shall be not less than that required for the underlying zone. Any accessory building shall observe a distance from a building containing a dwelling unit as set forth in the underlying zone;

(4) Height of Buildings. In a planned unit development no building or structure shall exceed the height which is allowed by this title in the underlying zone for the particular type building or structure;

(5) Number of Dwelling Units. The number of dwelling units permitted in any residential zone shall be determined by dividing the net development area by the minimum lot area per dwelling unit required by the underlying zone. Net development area shall be determined by subtracting the area set aside for

churches, schools, or commercial use from the total development area;

(6) Permitted Site Coverage. The permitted percentage of coverage by buildings and structures for the net development area as determined in subsection (5) of this section shall not exceed the percentage of coverage permitted in the underlying zone;

(7) Permitted Floor Area. The maximum permitted floor area for all buildings shall not exceed the floor area permitted in the zone first permitting the use authorized;

(8) Off-Street Parking. The total required off-street parking facilities shall be not less than the sum of the required parking facilities for the various uses computed separately. All provisions of chapter 18.44 DMMC (Loading Areas and Off-Street Parking) shall be adhered to. [Ord. 1237 § 4, 1999; Ord. 1197 § 18, 1997; Ord. 222 §§ 7, 8, 1967; Ord. 175 §§ 1(24.56.100), 30, 31, 1964.]

18.52.105 Recreation area required.

(1) Within a planned unit development in a single-family residential or RA zone, park land shall be provided as specified by DMMC 17.36.150 (Parks).

(2) Within a planned unit development in a multifamily residential zone, on-site recreation area shall be provided as specified in chapter 18.45 DMMC (Multifamily Recreation Areas). [Ord. 1237 § 4, 1999; Ord. 1197 § 19, 1997; Ord. 901 § 6, 1991.]

18.52.110 Minor adjustments in planned unit development.

In issuing building permits in connection with the construction of a planned unit development, the building department may make minor adjustments involving the location or dimensions of buildings; provided, such adjustments shall not increase the total amount of floor space authorized in the planned unit development, or the number of dwelling units, nor decrease the amount of parking or loading facilities, nor permit buildings to locate closer to any boundary line, nor change any points of ingress and egress to the site. [Ord. 175 § 1(24.56.110), 1964.]

Chapter 18.56

LAND USE REVIEW PROCEDURES

Sections

18.56.010 Purpose and intent.

The purpose of this chapter is to establish standard procedures for land use and related development decisions made by the city of Des Moines. The procedures are designed to promote timely and informed public participation, eliminate redundancy in the application, land use review, and appeal processes, minimize delay and expense, and result in land use

actions that further the city goals, policies, and strategies as set forth in the Greater Des Moines Comprehensive Plan. As required by RCW 36.70B.060, as presently constituted or as may be subsequently amended, these procedures provide for an integrated and consolidated land use review process. The procedures integrate the environmental review process specified in Title 16 DMMC (Environment) with the procedures for land use actions specified in Title 14 DMMC (Buildings and Construction), Title 17 DMMC (Subdivisions), and Title 18 DMMC (Zoning), and provide for the consolidation of appeal processes for land use actions. The review procedures specified by Title 17 DMMC (Subdivisions) for a land use action authorized by that title shall take precedence over the procedures specified by this chapter. [Ord. 1174 § 1, 1996.]

18.56.020 Framework for decision.

(1) The scope of a land use action covered by this chapter shall be limited as specified by RCW 36.70B.030 as presently constituted or as may be subsequently amended.

(2) Except when a land use action is categorically exempt from SEPA, environmental review shall be conducted concurrently with review of other proposed land use actions requested by an applicant. Integrated and consolidated review shall be provided as required by RCW 36.70B.120 and 36.70B.140 as presently constituted or as may be subsequently amended.

(3) As allowed by RCW 36.70B.140(1) as presently constituted or as may be subsequently amended, the following land use actions are not subject to the provisions of RCW 36.70B.070, 36.70B.080, 36.70B.090, 36.70B.110, 36.70B.120, and 36.70B.130 because the city council has determined that these projects present special circumstances that warrant a review process different from the process specified by this chapter:

(a) Business park master plans;

(b) Street vacations and other actions relating to use of public areas or facilities;

(c) Type VI land use actions; and

(d) Abatement of nonconforming uses.

(4) As authorized by RCW 36.70B.140(2) as presently constituted or as may be subsequently amended, the following Type I land use actions shall not be subject to the provisions of RCW 36.70B.060, 36.70B.110, 36.70B.120, and 36.70B.130 as presently constituted or as may be subsequently amended:

(a) Lot line adjustments.

(b) Construction permits required under Title 14 DMMC that are categorically exempt from environmental review under chapter 16.04 DMMC (SEPA Rules), or for which environmental review has been completed in conjunction with other project permits.

(5) Land use actions are classified into six types, based upon the entity responsible for the decision, the amount of discretion exercised by the decisionmaker, the degree of impact associated with the decision, the amount and type of public input sought, and the type of appeal available. The six categories of land use actions are as follows:

(a) Type I. Administrative decision made without legal requirement for public comment.

(b) Type II. Administrative decision made after legally required opportunity for public comment.

(c) Type III. Quasi-judicial and other decisions by hearing examiner made after legally required opportunity for public comment.

(d) Type IV. Quasi-judicial and other nonlegislative decisions by city council made after legally required opportunity for public comment.

(e) Type V. Quasi-judicial and other nonlegislative decisions by city council made without legal requirement for public comment.

(f) Type VI. Legislative decision by city council made after legally required opportunity for public comment.

(6) The land use review procedures specified by Title 17 DMMC (Subdivisions) for a land use action explicitly covered by that title shall control over the procedures specified by this chapter. [Ord. 1341 § 1, 2004: Ord. 1287 § 1, 2001: Ord. 1174 § 2, 1996.]

18.56.030 Type I land use action – General.

A Type I land use action is an administrative land use decision made by the community development director. Public notice of application is not required for a Type I land use action. The following actions are designated as Type I land use actions:

(1) Sign special use permit.

(2) Comprehensive sign design permit.

(3) Design review.

(4) Lot line adjustment.

(5) On-site parking exception.

(6) Accessory living quarters development permit.

(7) Reduction of the minimum dimension of on-site parking.

(8) Waiver of zoning requirement as specified by chapter 18.61 DMMC.

(9) Building height bonus.

(10) Determination that the action is categorically exempt from State Environmental Policy Act (SEPA) Rules.

(11) Interpretation of Title 14 DMMC (Buildings and Construction), Title 16 DMMC (Environment), Title 17 DMMC (Subdivisions), and Title 18 DMMC (Zoning).

(12) Construction permits required under Title 14 DMMC (Buildings and Construction).

(13) Actions not specifically listed in this or any other section of this chapter and that are administrative land use actions made without legal requirement for public comment. [Ord. 1378 § 13, 2006: Ord. 1267 § 12, 2000: Ord. 1174 § 3, 1996.]

18.56.040 Type II land use action – General.

A Type II land use action is an administrative land use decision made by the community development director. Public notice of application is required for a Type II land use action. The following actions are designated as Type II land use actions:

(1) Determination of nonsignificance (DNS) and mitigated DNS.

(2) Determination of significance (DS).

(3) Determination of the adequacy of a final environmental impact statement.

(4) Binding site plan with no more than four lots.

(5) Short subdivision.

(6) Alteration or vacation of short subdivision without public dedication.

(7) Alteration or vacation of binding site plan with no more than four lots.

(8) Townhouse development with no more than four lots.

(9) Community development director approval, conditional approval, or denial of a project based upon chapter 16.04 DMMC (SEPA Rules).

(10) Actions not specifically listed in this or any other section of this chapter and that are administrative land use actions taken after a legally required opportunity for public comment. [Ord. 1197 § 35, 1997; Ord. 1174 § 4, 1996.]

18.56.050 Type III land use action – General.

A Type III land use action includes quasi-judicial land use decisions and other land use decisions made by the hearing examiner. Except as specified below, public notice of application is required for a Type III land use action. The following actions are designated as Type III land use actions:

(1) Variance.

(2) Conditional use permit.

(3) Environmentally critical area development exception.

(4) Shoreline substantial development permit and revisions.

(5) Modification of parking provisions.

(6) Hearing examiner approval, conditional approval, or denial of a project based upon chapter 16.04 DMMC (SEPA Rules).

(7) Appeal of an administrative land use decision, except that appeal of a decision of the building official is limited to interpretation or application of the building code, mechanical code, electrical code, and plumbing code. Public notice requirements for appeal of an administrative land use decision are provided by DMMC 18.94.150.

(8) Actions not specifically listed in this or any other section of this chapter and that are quasi-judicial land use actions delegated to the hearing examiner by the city council. [Ord. 1174 § 5, 1996.]

18.56.060 Type IV land use action – General.

A Type IV land use action includes quasi-judicial land use decisions and other nonlegislative land use decisions made by the city council. Public notice of application is required for a Type IV land use action. The following actions are designated as Type IV land use actions:

(1) Zoning map amendment (rezone).

(2) Unclassified use permit.

(3) Preliminary planned unit development.

(4) Business park master plan.

(5) Final binding site plan for a business park master plan.

(6) Subdivision – preliminary plat.

(7) Preliminary modified subdivision.

(8) Preliminary alteration or vacation of subdivision.

(9) Preliminary alteration or vacation of short subdivision with public dedication.

(10) Preliminary alteration or vacation of binding site plan with public dedication.

(11) Preliminary alteration or vacation of binding site plan with more than four lots and not involving public dedication.

(12) Preliminary binding site plan with more than four lots.

(13) Preliminary townhouse development with more than four lots.

(14) Shoreline substantial development with an environmental impact statement.

(15) Shoreline conditional use.

(16) Shoreline variance.

(17) City council approval, conditional approval, or denial of a project based upon chapter 16.04 DMMC (SEPA Rules).

(18) Actions not specifically listed in this or any other section of this chapter and that are quasi-judicial land use actions made by the city council following a legally required opportunity for public comment. [Ord. 1341 § 2, 2004: Ord. 1287 § 2, 2001: Ord. 1197 § 36, 1997; Ord. 1174 § 6, 1996.]

18.56.070 Type V land use action – General.

A Type V land use action includes quasi-judicial land use decisions and other nonlegislative land use decisions made by the city council. Public notice of application is not required for a Type V land use action. The following actions are designated as Type V land use actions:

(1) Textual code amendment of Title 14 DMMC (Buildings and Construction) and Title 16 DMMC (Environment).

(2) Final planned unit development.

(3) Subdivision – final plat.

(4) Final modified short subdivision.

(5) Final modified subdivision.

(6) Final alteration or vacation of subdivision.

(7) Final alteration or vacation of short subdivision with public dedication.

(8) Final alteration or vacation of binding site plan with public dedication.

(9) Final alteration or vacation of binding site plan with more than four lots and not involving a public dedication.

(10) Final binding site plan with more than four lots.

(11) Final townhouse development with more than four lots.

(12) Actions not specifically listed in this or any other section of this chapter and that are quasi-judicial land use actions made by the city council without a legal requirement for public comment. [Ord. 1197 § 37, 1997; Ord. 1174 § 7, 1996.]

18.56.080 Type VI land use action – General.

A Type VI land use action is a legislative land use decision made by the city council. Public notice of application is required for a Type VI land use action. The following actions are designated as Type VI land use actions:

(1) Textual code amendment of Title 17 DMMC (Subdivisions) and Title 18 DMMC (Zoning).

(2) Area-wide rezones.

(3) Comprehensive plan adoption or amendment.

(4) Actions not specifically listed in this or any other section of this chapter and that are legislative land use actions made by the city council. [Ord. 1174 § 8, 1996.]

18.56.085 Type VII land use action – General.

Repealed by Ord. 1341. [Ord. 1287 § 3, 2001.]

18.56.090 Application.

(1) The city shall integrate its land use review and environmental review processes in order to avoid unnecessary duplication or delay. When a proposed development requires more than one land use action, the applicant may request concurrent review of all proposed land use actions.

(2) All applications for land use actions and other city approvals specified in Title 14 DMMC (Buildings and Construction), Title 16 DMMC (Environment), Title 17 DMMC (Subdivisions), and Title 18 DMMC (Zoning) shall be submitted on forms specified by the community development department. All applications shall be authorized by the property owner. [Ord. 1174 § 9, 1996.]

18.56.100 Pre-application meetings.

(1) Informal Pre-Application Meetings. Applicants for a land use action may participate in an informal meeting prior to submittal of the application for land use action or the formal pre-application meeting. The purpose of the meeting is to discuss, in general terms, the proposed land use action, alternatives, required approvals, and the land use action process.

(2) Formal Pre-Application Meetings. Unless waived by the community development director, potential applicants or their designees are required to attend a formal pre-application meeting for all Type III, Type IV, and Type VI land use actions. The purpose of the meeting is to discuss the nature of the proposed development, application and approval requirements, fees, review process and schedule, and applicable policies and regulations. As appropriate, the community development director shall invite representatives of affected agencies, such as other city departments and special purpose districts, to attend any formal pre-application meeting. This meeting requirement should be deemed waived in the event the community development director or the community development director's designee is unavailable to meet within 10 days of a request for such meeting. [Ord. 1341 § 3, 2004: Ord. 1287 § 4, 2001: Ord. 1174 § 10, 1996.]

18.56.110 Contents of applications.

(1) All applications for land use actions under Title 14 DMMC (Buildings and Construction), Title 16 DMMC (Environment), Title 17 DMMC (Subdivisions), and Title 18 DMMC (Zoning) shall include the information specified in the applicable title. The property owner shall sign all applications or provide written authorization of the requested land use action. The community development director may require additional information as reasonably necessary to fully and properly evaluate the proposed land use action.

(2) The applicant may submit consolidated applications for concurrent review, or phase application submittal for consecutive review and approval. [Ord. 1174 § 11, 1996.]

18.56.120 Acceptance for vesting.

(1) An application for a proposed land use action shall not serve to vest any development rights until the community development director determines the application is complete as specified by this code.

(2) Applications found to include material errors shall be deemed withdrawn and subsequent submittals shall be treated as a new application and shall require a new application fee.

(3) Applicant-generated requests for revision(s), i.e., those requests which are not made in response to staff review or public appeal, that result in a substantial change to the proposed land use action, as determined by the community development director, shall be treated as a new application as of the date of receipt of the revision by the community development department and shall require a new application fee. [Ord. 1174 § 12, 1996.]

18.56.130 Notice of complete application.

(1) An application for land use action is complete for purposes of this section when it contains all of the following:

(a) A completed application form.

(b) All applicable fees.

(c) Written authorization of the property owner.

(d) A completed environmental checklist for projects subject to review under the State Environmental Policy Act (SEPA).

(e) Information required in applicable titles of the Des Moines Municipal Code.

(2) Notice of complete application shall be provided as provided in RCW 36.70B.070 as presently constituted or as may be subsequently amended.

(3) For the purposes of this section, applications will only be deemed "received" if filed during regular business hours with the appropriate department and date-stamped by a city official authorized to accept such applications.

(4) More than one request for additional information may be required by the community development director prior to the issuance of a notice of complete application. The community development director shall attempt to minimize the number of requests for additional information. The applicant shall attempt to provide the requested information in a complete and prompt manner. [Ord. 1174 § 13, 1996.]

18.56.140 Public notice of proposed land use action.

(1) Upon a determination that a complete application for a land use action has been filed, the community development director shall issue a notice of proposed land use action as required by RCW 36.70B.110 as presently constituted or as may be subsequently amended.

(2) The notice of proposed land use action shall be provided as specified by Article V of chapter 16.04 DMMC (Commenting), DMMC 18.94.150 (Notice of hearing – Required), DMMC 18.94.160 (Notice of hearing – Content), DMMC 18.94.170 (Persons entitled to notice), and DMMC 18.94.180 (Notice of hearing – When given).

(3) Unless an open record public hearing is required, public notice of a land use action is not required for a Type I land use action or an action categorically exempt under chapter 16.04 DMMC.

(4) The notice of proposed land use action shall indicate that a 15-day public comment period is provided.

(5) Written comment in response to a notice of proposed land use action shall be provided to the community development department during the 15-day public comment period.

(6) If allowed by chapter 197-11 WAC as presently constituted or as may be subsequently amended, notice of proposed land use action may be combined with notice of proposed DNS for the purpose of consolidating comment periods. [Ord. 1174 § 14, 1996.]

18.56.150 Review process for Type I land use action.

(1) The community development director may approve, approve with conditions, or deny a Type I land use action without public notice.

(2) The decision of the community development director shall be effective on the date issued.

(3) The community development director's decision regarding a Type I land use action is appealable to the hearing examiner as provided in DMMC 18.94.113. [Ord. 1174 § 15, 1996.]

18.56.160 Review process for Type II land use action.

(1) Upon conclusion of the 15-day public comment period, the community development director may approve, approve with conditions, or deny a Type II land use action subject to applicable public notice and appeal provisions.

(2) The community development director's decision regarding a Type II land use action shall be effective on the date issued.

(3) Except as provided by subsections (4) and (5) of this section, the community development director's decision regarding a Type II land use action is appealable to the hearing examiner as provided in DMMC 18.94.113.

(4) A determination of significance (DS) is not appealable to the hearing examiner or the city council and may be appealed by filing a land use petition with the superior court of

Washington for King County as provided by chapter 36.70C RCW, as presently constituted or as may be subsequently amended.

(5) Within the Pacific Ridge area, a SEPA determination is not appealable to the hearing examiner or the city council and may be appealed by filing a land use petition with the superior court of Washington for King County as provided by chapter 36.70C RCW, as presently constituted or as may be subsequently amended. [Ord. 1267 § 13, 2000: Ord. 1217 § 20, 1998: Ord. 1174 § 16, 1996.]

18.56.170 Review process for Type III land use action.

(1) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the hearing examiner may approve, approve with conditions, or deny a Type III land use action as specified by chapter 18.94 DMMC (Hearing examiner code).

(2) The hearing examiner's decision regarding a Type III land use action is appealable to the Superior Court of Washington for King County as specified by DMMC 18.94.260 (Appeals from decision of hearing examiner). [Ord. 1174 § 17, 1996.]

18.56.180 Review process for Type IV land use action.

(1) The planning agency shall conduct a public meeting for review of the proposed land use action. The planning agency may recommend approval, approval with conditions or amendments, or denial of a Type IV land use action. The recommendation(s) of the planning agency shall be forwarded to the city council.

(2) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the city council may approve, approve with conditions, or deny a Type IV land use action upon compliance with the procedural requirements of chapter 18.94 DMMC (Hearing examiner code).

(3) The city council's decision regarding a Type IV land use action is appealable to the Superior Court of Washington for King County as specified by DMMC 18.94.300 (Appeal from decision of the city council). [Ord. 1174 § 18, 1996.]

18.56.190 Review process for Type V land use action.

(1) The city council may approve, approve with conditions, or deny a Type V land use action without public notice other than the notice requirements for public meetings.

(2) The decision of the city council shall be effective on the date final action is taken during a public meeting or as otherwise provided by law.

(3) The city council's decision regarding a Type V land use action is appealable the Superior Court of Washington for King County as specified by DMMC 18.94.300 (Appeal from decision of the city council). [Ord. 1174 § 19, 1996.]

18.56.200 Review process for Type VI land use action.

(1) For all Type VI land use actions except textual code amendments, the planning agency shall conduct a public hearing for review of the proposed land use action. The planning agency may recommend approval, approval with conditions, or denial of a Type VI land use action. The recommendation(s) of the planning agency shall be forwarded to the city council.

(2) For textual code amendments, the community development director may schedule a public meeting before the planning agency as provided in DMMC 18.60.120.

(3) Upon conclusion of the 15-day comment period, the city council may approve, approve with conditions, or deny a Type VI land use action upon compliance with the procedural requirements of chapter 18.60 DMMC (Amendments, Unclassified Use Permits, Planned Unit Developments, and Appeals).

(4) Except for matters subject to review by the Central Puget Sound Growth Management Hearings Board as provided by RCW 36.70A.280 as presently constituted or as may be subsequently amended, the city council's decision regarding a Type VI land use action is appealable the Superior Court of Washington for King County as specified by DMMC 18.94.300 (Appeal from decision of the city council). [Ord. 1193 § 5, 1997; Ord. 1174 § 20, 1996.]

18.56.205 Review process for Type VII land use action.

Repealed by Ord. 1341. [Ord. 1287 § 5, 2001.]

18.56.210 Written report or decision.

A written report shall be provided as required by RCW 36.70B.060 and 36.70B.130 as presently constituted or as may be subsequently amended. [Ord. 1174 § 21, 1996.]

18.56.220 Procedures for open record public hearings.

(1) Open record public hearings shall be conducted as required by chapter 4.12 DMMC (City Council – Rules of Procedure), chapter 18.94 DMMC (Hearing Examiner), RCW 36.70B.020, 36.70B.060, 36.70B.110, 36.70B.120, 43.21C.075, and other applicable law as presently constituted or as may be subsequently amended.

(2) Written information received from the public or other agencies shall be admitted to the record during the time between the publication of the applicable public notice, and the closing of the open record public hearing by the presiding officer of the city council hearing.

(3) Oral testimony from the public or other agencies shall be admitted to the record during the time between the opening and closing of the open record public hearing by the presiding officer of the city council hearing.

(4) Upon the closing of the open record public hearing by the presiding officer of the city council hearing, no additional written information or oral testimony from the public or other agencies will be accepted or considered. [Ord. 1341 § 4, 2004: Ord. 1287 § 6, 2001: Ord. 1193 § 6, 1997; Ord. 1174 § 22, 1996.]

18.56.230 Procedures for closed record appeal hearings.

(1) Closed record appeal hearings shall be conducted in accordance with chapter 4.12 DMMC (City Council – Rules of Procedure) and chapter 18.94 DMMC (Hearing Examiner) as applicable.

(2) Closed record public hearings shall be conducted as required by RCW 36.70B.020, 36.70B.060, 36.70B.110, 36.70B.120, 43.21C.075, and other applicable law as presently constituted or as may be subsequently amended.

(3) Except as specified by procedures for reconsideration or remand, no new evidence or testimony shall be given or received during a closed record appeal hearing. However, the parties to the appeal may submit written statements limited to the issue(s) appealed. [Ord. 1174 § 23, 1996.]

18.56.240 Reconsideration.

A party to a public hearing or closed record appeal may seek reconsideration of a final decision. Requests for reconsideration shall be submitted and considered as specified by DMMC 18.94.250 (Decision – Reconsideration). [Ord. 1287 § 7, 2001: Ord. 1174 § 24, 1996.]

18.56.250 Remand.

The city council may remand a hearing examiner decision on a Type III land use action as specified by DMMC 18.94.290 (City council action on appeal – Procedure – Burden of proof – Criteria to affirm, modify, reverse, or remand). [Ord. 1174 § 25, 1996.]

18.56.260 Final decision.

(1) When written notice of a final decision is required, such notice shall be provided as specified by RCW 36.70B.060, 36.70B.090, and 36.70B.130 as presently constituted or as may be subsequently amended.

(2) As specified by chapter 64.40 RCW, as presently constituted or as may be subsequently amended, the city is not liable for damages under this chapter due to the city's failure to make a final decision within the time limit specified by RCW 36.70B.090 or other applicable law. [Ord. 1174 § 26, 1996.]

18.56.270 Appeals.

(1) Appeals shall conform to the requirements specified by RCW 36.70B.030, 36.70B.060, 43.21C.075, 90.58.180, chapter 36.70C RCW, and other applicable law as

presently constituted or as may be subsequently amended.

(2) Appeal of an administrative land use action shall be filed as specified by DMMC 14.04.130 (Appeals), 16.04.210 (Agency SEPA appeals), 17.12.170 (Appeals), chapter 18.60 DMMC (Amendments, Unclassified Use Permits, Planned Unit Developments, and Appeals), DMMC 18.86.150 (Appeals), and chapter 18.94 DMMC (Hearing Examiner). Appeal of an administrative decision relating to a proposed Type III, Type IV, or Type VI land use action shall be resolved during the required open record public hearing.

(3) Except for appeal of shoreline substantial development and other shoreline decisions, appeal of a hearing examiner land use decision shall be filed as specified by chapter 18.94 DMMC (Hearing Examiner). Appeal of shoreline substantial development and other shoreline decisions shall be filed with the shoreline hearings board as specified by chapter 90.58 RCW as presently constituted or as may be subsequently amended.

(4) Except for appeal of shoreline substantial development and other shoreline decisions, appeal of a city council decision and other land use actions for which available remedies have been exhausted shall require the filing of a land use petition in Superior Court of Washington for King County as specified by DMMC 18.94.300 and chapter 36.70C RCW as presently constituted or as may be subsequently amended. Appeal of shoreline substantial development and other shoreline decisions shall be filed with the shoreline hearings board as specified by chapter 90.58 RCW, as presently constituted or as may be subsequently amended. [Ord. 1341 § 5, 2004: Ord. 1287 § 8, 2001: Ord. 1174 § 27, 1996.]

Chapter 18.58

DESIGN REVIEW*

Sections

*Code reviser's note: This chapter was recodified from chapter 2.32 DMMC by Ord. 1174 § 98.

18.58.010 Design review authority.

Repealed by Ord. 1268. [Ord. 1174 § 98, 1996; Ord. 1135 § 2(8)(part), 1995; Ord. 581 § 1, 1983: Ord. 474 § 3, 1979. Formerly 2.32.010.]

18.58.020 Intent and purpose.

These regulations are adopted for the following purposes:

(1) To promote the public health, safety, and general welfare of the citizens of the city;

(2) To recognize that land use regulations aimed at the orderliness of community growth, the protection and enhancement of property values, the minimization of discordant and unsightly surroundings, the avoidance of inappropriateness and poor quality of design and other environmental and aesthetic objectives provide not only for the health, safety, and general welfare of the citizens, but also for their comfort and prosperity and the beauty and balance of the community, and as such, are the proper and necessary concerns of local government;

(3) To protect, preserve, and enhance the social, cultural, economic, environmental, aesthetic, and natural values that have established the desirable quality and unique character of Des Moines;

(4) To promote and enhance construction and maintenance practices that will tend to promote visual quality throughout Des Moines;

(5) To recognize environmental and aesthetic design as an integral part of the planning process; and

(6) To implement adopted land use policies and regulations, including the Des Moines Comprehensive Plan, Marina District Design Guidelines, Pacific Ridge Neighborhood Improvement Plan, and Pacific Ridge Design Guidelines. [Ord. 1486 § 6, 2010: Ord. 1268 § 2, 2000: Ord. 1174 § 98, 1996; Ord. 1135 § 2(8)(part), 1995; Ord. 474 § 1, 1979. Formerly 2.32.020.]

18.58.030 Definitions.

(1) Use of Words and Phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) "Architectural feature" means the exterior architectural treatment and general arrangement of the portions of an improvement and site that are open to external view, including, but not limited to, the kind, color, and texture of building materials, types of windows and doors, attached or detached signs, landscaping, screens, parking lots, exterior lighting, walkways, and other fixtures appurtenant to such portions.

(3) "Capital improvement" means an improvement visible to the public, done by the city upon property owned by or under control of the city.

(4) "Improvement" means a building, structure, or other improvement to real property. It shall include, but not be limited to, street improvements, street furniture, park developments, private and public schools, commercial and business developments, public utility and governmental buildings and structures, religious institutions, hotels, motels, apartment houses and other multiple-family dwellings, certain single-family dwelling units, hospitals, rest homes and other similar developments, and commercial and non-commercial recreational areas. It shall not include underground wires, pipes, or other similar underground utility installations.

(5) "Regulated improvements" means an improvement upon any property within the city, other than one single-family dwelling unit, structure, or building, and uses accessory thereto; except multiple building permit applications by the same applicant or one standing in privity to the applicant for the construction of a series of single-family dwellings in the same subdivision or short subdivision are considered regulated improvements.

(6) "Street furniture" means improvements located in streets or rights-of-way and parking lots or other similar open spaces on a site, including, but not limited to, light standards, utility poles, newspaper stands, bus shelters, planters, traffic signs, traffic signals, benches, guard rails, rockeries, retaining walls, mailboxes, litter containers, and fire hydrants. [Ord. 1174 § 98, 1996; Ord. 1135 § 2(8)(part), 1995; Ord. 993 § 2, 1992: Ord. 493, 1980: Ord. 474 § 2, 1979. Formerly 2.32.030.]

18.58.040 Delegation of design review authority, consultants, expedited matters.

The city manager shall have responsibility for all design review decisions, but may delegate such authority to subordinates who are qualified in the fields of planning, engineering, building, landscaping, and the like. The city manager is further authorized to employ consultants if, in his discretion, the scope, size, or nature of the project requires services beyond the capabilities of city staff. In the event such consultants are employed, the building permit fee may be increased to include the cost of consulting services. In the event the city manager finds that the application presents special problems relative to planning or zoning, he may decline to take action and refer the application to the city council as an expedited matter. [Ord. 1174 § 98, 1996; Ord. 1135 § 2(8)(part), 1995; Ord. 581 § 2, 1983: Ord. 474 § 4, 1979. Formerly 2.32.040.]

18.58.050 Procedure.

The city manager may adopt by executive order procedural rules for the efficient imple-

18.58.090 Criteria.

Decisions to approve, conditionally approve, or deny a design review application shall be based on the following criteria:

(1) Relationship to Building Site.

(a) The site should be planned to accomplish the desirable transition with the streetscape, provide for adequate planting, and to facilitate pedestrian movement.

(b) Parking and service areas shall be located, designed, and screened from public view.

(c) The height and scale of each building should be compatible with its site and adjoining buildings.

(2) Relationship of Building and Site to Adjoining Area.

(a) Buildings and structures should be made compatible with adjacent buildings of conflicting architectural styles by such means as screens, sight breaks, and materials.

(b) Harmony in texture, lines, and masses should be encouraged.

(c) Attractive landscape transition to adjoining properties should be provided.

(3) Landscape and Site Treatment.

(a) Where existing topographic patterns contribute to beauty and utility of a development, they should be preserved and developed.

(b) Grades of walks, parking spaces, terraces, other paved areas, and large expanse of walls should provide an inviting and stable appearance.

(c) Landscape treatment should enhance architectural features, strengthen vistas and important axes, and provide shade.

(d) In locations where plants will be susceptible to injury by pedestrian or motor traffic, they should be protected by appropriate curbs, tree guards, or other devices.

(e) Where building sites limit planting, the placement of trees or shrubs in parkways or paved areas is encouraged.

(f) Screening of service yards and other places which tend to be unsightly should be accomplished by use of walls, fencing, planting, or combinations of these. Screening should be effective in winter and summer.

(g) In areas where general planting will not prosper, other materials such as fences, walls, and pavings of wood, brick, stone, gravel, etc., should be used.

(h) Exterior lighting, when used, should enhance the building design and the adjoining landscape. Lighting standards and fixtures should be of a design and size compatible with the building and adjacent areas. Lighting should be shielded and restrained in design. Excessive brightness and brilliant colors should be avoided.

(4) Building Design.

(a) Evaluation of a project shall be based on the quality of its design and relationship to the natural setting of its surroundings.

(b) Building components, such as windows, doors, eaves, and parapets, should be proportionate and relative to each other.

(c) Colors should be harmonious, with bright or brilliant colors used only for accent.

(d) Design attention should be given to mechanical equipment or other utility hardware on roofs, grounds, or buildings to screen them from view.

(e) Exterior lighting, when used, shall be part of the architectural concept. Fixtures, standards, and all exposed accessories should be harmonious with the building design.

(f) Monotony of design in single or multiple building projects should be avoided. Variety of detail, form, and siting should be used to provide visual interest. In multiple building projects, variable siting of individual buildings may be used to prevent a monotonous appearance.

(5) Signs.

(a) Signs shall conform to the ordinances of the city relative to signs.

(b) Signs should be part of the architectural concept. Size, materials, color, lettering, location, number, and arrangements should be harmonious with the building design.

(c) The number and size of signs should be minimized to avoid visual clutter.

(d) Colors shall be used harmoniously and with restraint. Excessive brightness and brilliant colors shall be avoided. Lighting should be harmonious with the design. If exter-

nal spot or flood lighting is used, it should be arranged so that light source is shielded from view.

(6) Miscellaneous Structures and Street Furniture.

(a) Miscellaneous structures and street furniture located on private property, public ways, and other public property should be designed to be part of the architectural concept of the design and landscape. Materials should be compatible with buildings. Scale should be appropriate. Colors should be in harmony with buildings and surroundings. Proportions should be to scale.

(b) Lighting in connection with miscellaneous structures and street furniture should meet the criteria applicable to site, landscape, buildings, and signs.

(7) In addition to the criteria above, properties within Pacific Ridge as delineated by the Des Moines Comprehensive Plan shall satisfy the purpose and intent of the Pacific Ridge design guidelines.

(8) In addition to the criteria above, properties within downtown neighborhood, as delineated by the Des Moines Comprehensive Plan, shall satisfy the purpose and intent of the Marina District Design Guidelines. [Ord. 1486 § 7, 2010: Ord. 1268 § 4, 2000: Ord. 1174 § 98, 1996; Ord. 1135 § 2(8)(part), 1995; Ord. 474 § 9, 1979. Formerly 2.32.090.]

18.58.095 Decision.

(1) The community development director may approve, conditionally approve, or deny a design review application as provided by chapter 18.56 DMMC and this chapter.

(2) The community development director shall provide a written report or decision as provided by chapter 18.56 DMMC. The written report or decision shall include the following information:

(a) The name and address of the applicant;

(b) The location of the proposed development;

(c) A brief description of the proposed development;

(d) The decision to approve, conditionally approve, or deny the design review application;

(e) If the application is conditionally approved or denied, the applicable decision criteria shall be identified;

(f) The date of the report or decision. [Ord. 1268 § 8, 2000.]

18.58.100 Appeals.

A person or persons aggrieved by an action of the community development department under this chapter may file an appeal with the hearing examiner within 10 days of the department decision in accordance with the hearing examiner code. The filing of an appeal shall suspend the issuance of a building permit until final action is taken on the appeal. [Ord. 1174 § 98, 1996; Ord. 1135 § 2(8)(part), 1995; Ord. 770 § 33, 1988: Ord. 581 § 4, 1983: Ord. 474 § 10, 1979. Formerly 2.32.100.]

18.58.110 Enforcement – Violation – Penalty.

(1) No person shall violate or fail to comply with a provision of this chapter.

(2) A violation of or failure to comply with this section is a class 1 civil infraction.

(3) The community development director shall enforce the provisions of this chapter. The community development director shall inspect or cause to be inspected new construction subject to the provisions of this chapter, and if the community development director finds that construction is not in compliance with the approved plans and specifications, the community development director shall give notice in writing to the person responsible for the construction, setting forth the deficiencies that are to be corrected and the time within which such construction shall be completed. Failure to comply with the notice within the time specified is a violation of this chapter.

(4) In addition to such remedies, the city is authorized to file a suit in county superior court for the cessation of a construction within the city not in compliance with this chapter. [Ord. 1268 § 5, 2000: Ord. 1174 § 98, 1996; Ord. 1135 § 2(8)(part), 1995; Ord. 1009 § 29,

1993: Ord. 474 § 11, 1979. Formerly 2.32.110.]

18.58.120 Summary administrative approval – When allowed.

Repealed by Ord. 581. [Ord. 1174 § 98, 1996; Ord. 530 § 1, 1984. Formerly 2.32.120.]

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Chapter 18.60

AMENDMENTS, UNCLASSIFIED USE PERMITS, PLANNED UNIT DEVELOPMENTS, AND APPEALS

Sections

18.60.010 Zoning code may be amended.

Whenever public necessity, convenience, and general welfare require, the boundaries of the zones established on maps by this title, the zone of property uses in this title, or other provisions of this title may be amended as follows:

(1) By the adoption of or the amendment of a zoning map or maps; or

(2) By adoption of a planned unit development; or

(3) By amending the text of the title. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.60.010), 1964.]

18.60.020 Unclassified/conditional use permits.

Unclassified and conditional use permits may be granted upon the filing of an application therefor by a property owner or a lessee. An applicant for a conditional use permit shall follow the provisions of the hearing examiner code and "form of application" of chapter 18.64 DMMC. The procedure to be followed in considering an application for an unclassified use permit shall be the same as set forth in this chapter for amendments. Unclassified/conditional use permit applications filed for uses defined as essential public facilities will be processed in accordance with state law. [Ord. 1378 § 14, 2006: Ord. 770 § 66, 1988: Ord. 175 § 1(24.60.020), 1964.]

18.60.030 Initiation of amendment.

Amendments to this title and the zoning map of the city are initiated as follows:

(1) Amendments to the zoning map of the city may be initiated by:

(a) The verified application of one or more owners of property which is proposed to be reclassified or rezoned;

(b) Adoption of a motion by the city council directing the community development department to initiate the amendment;

(c) Adoption of a motion by the planning agency requesting the city manager to initiate the amendment through the community development department;

(d) The community development department with the approval of the city manager.

(2) In the case of textual changes to the zoning code, in the manner provided in DMMC 18.60.120. [Ord. 770 § 67, 1988: Ord. 553 § 1, 1982: Ord. 175 § 1(24.60.030), 1964.]

18.60.040 Public hearing required.

The city council shall hold one public hearing before taking action on any amendment to this title, application for a planned unit development, or unclassified use permit, and notice of the hearing shall be given as provided in Article V of chapter 16.04 DMMC (Commenting). [Ord. 1174 § 63, 1996; Ord. 175 § 1(24.60.040), 1964.]

18.60.050 Decision on applications – Time limit.

Repealed by Ord. 1174. [Ord. 175 § 1(24.60.050), 1964.]

18.60.060 Notice of planning agency's decision.

Repealed by Ord. 1174. [Ord. 175 § 1(24.60.060), 1964.]

18.60.070 Board to hold public hearing.

Repealed by Ord. 1174. [Ord. 175 § 1(24.60.070), 1964.]

18.60.080 Finality of planning agency's action.

Repealed by Ord. 1174. [Ord. 175 § 1(24.60.080), 1964.]

18.60.090 Actions of agency may be appealed – Time limit.

Repealed by Ord. 1174. [Ord. 175 § 1(24.60.100), 1964.]

18.60.100 Report appeal to the board.

Repealed by Ord. 1174. [Ord. 175 § 1(24.60.110), 1964.]

18.60.110 Decision of city council.

Enactment of a resolution or ordinance by the city council approving an amendment, planned unit developments, or unclassified use permits shall constitute final action. When the action of the city council is to deny a request for an amendment, planned unit development, or unclassified use permit, the adoption of the motion shall constitute final action. Written notice of the action shall be forwarded to the community development department to be attached to the permanent file of the case and the community development department shall notify the applicant of the final action of the city council. [Ord. 1174 § 64, 1996; Ord. 175 § 1(24.60.120), 1964.]

18.60.120 Textual changes to zoning code.

Amendments to this title that constitute a textual change are made in the following manner:

(1) As used in this section, unless the context or subject matter clearly requires otherwise, "textual change" means a change or amendment to this title except:

(a) Amendments changing the zone of a particular parcel of property (commonly known as a rezone); or

(b) Actions relating to adoption or amendment to the comprehensive plan.

(2) No textual change is made without at least one public hearing before the city council.

(3) The city council shall set a date for the public hearing by motion. Notice of the public hearing shall generally conform with DMMC 17.44.030 (Notice). Continued hearings may be held at the discretion of the city council but no additional notice is required.

(4) The community development director may schedule a public meeting of the planning agency to allow for review of a proposed textual code amendment. The planning agency may recommend approval, approval with conditions or amendments, or denial of the proposed textual code amendment. The recommendation(s) of the planning agency shall be forwarded to the city council for review during the public hearing. [Ord. 1237 § 3, 1999; Ord. 1174 § 65, 1996; Ord. 1062 § 1, 1993: Ord. 770 § 68, 1988: Ord. 553 § 2, 1982.]

18.60.130 Expiration of zoning reclassifications and unclassified use permits.

Any zoning reclassification granted pursuant to this title shall become void unless a building permit is applied for within the time specified in the enacting legislation or, if no date is specified, within three years of the effective date of the enacting ordinance. Zoning reclassifications initiated by the city are exempt from this provision. Any unclassified use permit granted pursuant to this title shall likewise become void unless a building permit is applied for (or the activity for which the permit is granted is commenced, if no building permit is involved) within the time specified in the permit, or if no date is specified, within three years of the action of the city council in granting the permit. [Ord. 769 § 1, 1988.]

18.60.140 Notice requirements for comprehensive plan and zoning code amendments changing provisions regarding lot area per dwelling unit.

For proposed comprehensive plan and textual code amendments regarding lot area per

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dwelling unit, the city shall notify all owners of properties that would be subject to the proposed change(s) in lot area per dwelling unit requirements. Notice to such owners, and specific requirements related to the timing and form of such notices, as well as other parties who are also entitled to notice, shall generally conform with the public notice procedure for site-specific proposals, contained in Article V of chapter 16.04 DMMC, particularly DMMC 16.04.160(5). [Ord. 1241 § 1, 1999.]

Chapter 18.61

WAIVER OF ZONING REQUIREMENTS

Sections

18.61.010 Authority to waive requirements.

In those instances where the city council has passed an ordinance amending the zoning map and such amendment has restricted the use of the rezoned property, by ordinance or concomitant agreement, to a specified and unified project in accordance with plans and specifications incorporated by reference in the ordinance granting the zoning amendment, the city manager shall have the authority to waive certain setback requirements as described in DMMC 18.61.020. [Ord. 521 § 1, 1981.]

18.61.020 Setback requirements – Waiver limitations.

The setback requirements which may be waived are the open spaces between buildings which are required where lots have been short platted and which would not have been required if the lots had not been short platted. Prior to granting the setback requirement waiver, the city manager must be satisfied that the waiver is consistent with and effectuates the intent of the city council in granting the project zoning. [Ord. 521 § 2, 1981.]

18.61.030 Appeal procedure.

Any person aggrieved by the decision of the city manager in either granting or denying a setback requirement waiver in accordance with this chapter may appeal such decision to the hearing examiner by filing such appeal in writing with the city clerk within 10 days of the rendering of such decision. Such appeal shall be in accordance with the hearing examiner code. [Ord. 770 § 69, 1988: Ord. 521 § 3, 1981.]

Chapter 18.64

PROCEDURES, FEES, HEARINGS, AND NOTICES

Sections

18.64.010 Establishment of rules for conduct of hearings.

(1) The hearing examiner shall conduct public hearings in accordance with the provisions of the hearing examiner code.

(2) The planning agency may establish rules governing the conduct of public hearings and meetings conducted by it on matters within its jurisdiction. Modifications or changes in such rules may be made, but such changes or modifications shall not become effective until 30 days following the date of the meeting at which such changes or modifications are determined. Copies of the rules shall be made available to the public at the community development department office. [Ord. 770 § 70, 1988: Ord. 175 § 1(24.62.010), 1964.]

18.64.020 Forms of applications and types of information.

The community development department shall prescribe the form in which applications are made for changes in zone boundaries or zones, for planned unit development, unclassified or conditional use permits, and variances. No application shall be accepted unless it complies with such requirements and is verified under oath as to the correctness of information given by the applicant attesting thereto. [Ord. 1237 § 3, 1999; Ord. 770 § 71, 1988: Ord. 175 § 1(24.62.020), 1964.]

18.64.030 Limitations on refiling of applications.

Upon final action in denying an application or petition for an action permitted by the zoning code or upon the verbal or written withdrawal of an application or petition following convening of a public hearing, the community development department shall not accept further filing of an application for substantially the same property involving substantially the same use within six months from the date of final action or withdrawal. [Ord. 1148 § 2, 1995: Ord. 770 § 72, 1988: Ord. 175 § 1(24.62.030), 1964.]

18.64.040 Records.

The agency shall cause to be kept a brief minute record of the proceeding. Such record, applications filed pursuant to this title, the written order or motion showing the action and the reasons therefor and the evidence of notice, and other material shall become a part of the records of the agency to which application is made. Provisions for custody of such additional records or minutes may be adopted by the agency. [Ord. 175 § 1(24.62.040), 1964.]

18.64.050 Filing fees.

(1) Fees for the following shall be set by administrative order of the city manager:

(a) Change of zone;
(b) Unclassified use permit;
(c) Planned unit development;
(d) Variance;
(e) Conditional use permit;
(f) Comprehensive plan amendment.

(2) Application fees from conditional use permits in regard to antenna systems, however, may be set at a cost less than the common and usual application fees set for conditional uses due to lower processing expenses. [Ord. 1174 § 66, 1996; Ord. 454 § 1(U), 1979: Ord. 445 § 7, 1978: Ord. 175 § 1(24.62.050), 1964.]

18.64.060 Setting of hearings.

The date of public hearings before the planning agency shall be not less than 15 days nor more than 60 days from the date of notice of complete application. [Ord. 1174 § 67, 1996; Ord. 175 § 1(24.62.060), 1964.]

18.64.070 Hearings may be continued without public notice.

If, for any reason, testimony on any matter set for public hearing, or being heard, cannot be completed on the date set for such hearing, the person presiding at such public hearing or meeting may, before adjournment or recess of such matters under consideration, publicly announce the time and place to, and at which, the hearing or meeting will be continued and no further notice is required. [Ord. 175 § 1(24.62.070), 1964.]

18.64.080 Notice of hearings.

Notice of the time and place of public hearings at which a matter under this title will be considered shall be given in accordance with the hearing examiner code. [Ord. 770 § 73, 1988: Ord. 175 §§ 1(24.62.080), 32, 1964.]

18.64.090 Required content of notice.

Notice of hearing on zone reclassifications, amendments, planned unit developments, variances, or unclassified or conditional use permits shall be in accordance with the hearing examiner code. [Ord. 770 § 74, 1988: Ord. 175 § 1(24.62.090), 1964.]

18.64.100 Withdrawal of application or petition – Effect – Refund of fees.

An application or petition for an action permitted by the zoning code that is withdrawn verbally or in writing is subject to the following provisions:

(1) If a verbal or written withdrawal request is made prior to the convening of a public hearing, the withdrawal is permitted as a matter of right and the limitation on refiling of the application or petition as provided in DMMC 18.64.030 is inapplicable.

(2) If a verbal or written withdrawal request is made after the convening of a public hearing, the applicant is prohibited from fur-

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ther filing of an application for substantially the same property involving substantially the same use for a period of six months from the date of withdrawal.

(3) The community development director may authorize a full or partial refund of application or petition fees. The amount of the refund is reduced in proportion to the costs incurred by the city up to and including the date a refund claim is made.

(4) A full refund of fees is granted only when the withdrawal is caused by an error or omission on the part of the city.

(5) A person claiming a refund must submit a statement in writing to the community development director giving the basis for the refund claim. Such statement shall be made within 10 days of the acceptance of the withdrawal. [Ord. 1148 § 1, 1995.]

Chapter 18.68

REVOCATION, EXPIRATION OF PERMITS

Sections

18.68.010 Permits or variances may be revoked.

(1) The city council, after a recommendation from the community development department, may revoke or modify any permit associated with a Type IV or Type V land use action.

(2) The hearing examiner, after a recommendation from the community development department, may revoke or modify any permit associated with a Type III land use action.

(3) The hearing examiner has jurisdiction to revoke or modify any conditional use permit that was issued prior to the enactment of the ordinance codified in this chapter. Such revocation or modifications shall be made on any one or more of the following grounds:

(a) That the approval was obtained by fraud;

(b) That the use for which such approval was granted has been abandoned;

(c) That the use for which such approval was granted has at any time ceased for one year or more;

(d) That the permit or variance granted is being exercised contrary to the terms or conditions of such approval or in violation of any statute, ordinance, code, law, or regulations; or

(e) That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety.

(4) Any action on a revocation or modification under this section shall be in accordance with the hearing examiner code and may be appealed by filing a land use petition with the Superior Court of Washington for King

County as specified by chapter 36.70C RCW, as presently constituted or as may be subsequently amended. [Ord. 1174 § 68, 1996; Ord. 770 § 75, 1988: Ord. 175 § 1(24.66.010), 1964.]

18.68.020 Initiation of revocation proceedings.

The community development department, following approval of the city manager, may initiate proceedings to revoke an unclassified or conditional use permit or variance, or any use permit which was issued prior to the enactment of this chapter. Individuals who are aggrieved may petition the community development department to initiate revocation proceedings. [Ord. 770 § 76, 1988: Ord. 175 § 1(24.66.020), 1964.]

18.68.030 Public hearing required.

Before a permit or a variance may be revoked or modified, a public hearing shall be held. Procedures concerning notice, reporting, and appeals shall be the same as required by this title for the initial consideration thereof. [Ord. 175 § 1(24.66.030), 1964.]

18.68.040 Expiration.

Any permit or variance granted pursuant to this title becomes null and void if not exercised within the time specified in such permit or variance or, if no date is specified, within one year from the effective date of approval of the permit or variance. [Ord. 175 § 1(24.66.040), 1964.]

18.68.050 Previously granted permits may be continued.

Where prior to August 3, 1964, a permit entitled "special permit," "temporary permit," "use and occupancy permit," "conditional use permit," or "permits requiring legislative determination" was granted for the establishment or conducting of a particular use on a particular site, such previous permits are by this section declared to be continued as conforming uses subject to the conditions and for the time specified in the original permit, if any; provided, that if the particular use is not otherwise permitted by this title in the zone in which it is located, such established use and improvements incident thereto shall be considered a nonconforming use, and shall be subject to the abatement provisions of this title. [Ord. 175 § 1(24.66.050), 1964.]

Chapter 18.72

PERMITS, LICENSES, AND ENFORCEMENT

Sections

18.72.010 Certificates of occupancy.

(1) To assure compliance with the provisions of this title, a certificate of occupancy shall be obtained from the building official before:

(a) Any new building is initially occupied or used;

(b) Any existing building is structurally altered or enlarged;

(c) Any change or addition to the occupancy of a building or premises is made.

(2) If the subject requiring a certificate of occupancy is also required to secure a building permit, a business license, or any other evidence of authority required by law, such required certificate of occupancy for such use may constitute a separately identified part of such permit, license, or other evidence, and shall be cleared through the building official as conforming, or not conforming, to the provisions of this title before any other license or permit or authority may be issued.

(3) Each certificate of occupancy shall be issued only upon application signed by the authorized applicant, and shall contain over the signature of the applicant a correct statement of the use intended to be established and such certificate of occupancy may be issued only if such declared intended use conforms in every respect to the provisions of this title. [Ord. 175 § 1(24.68.010), 1964.]

18.72.020 No conflicting licenses or permits shall be issued.

No license or permit in conflict with the provisions of this title shall be issued, and if issued, any such license or permit shall be null and void. [Ord. 175 § 1(24.68.020), 1964.]

18.72.030 Enforcement.

It shall be the duty of the city manager to enforce all provisions of this title; provided, however, the city manager is authorized to delegate such authority by written administrative order. [Ord. 684 § 1, 1987: Ord. 175 § 1(24.68.030), 1964.]

18.72.040 Unauthorized use of structures or land prohibited.

It shall be a violation of the city zoning code (hereinafter "code") for any person to use or cause to be used any structure or land in a manner not specifically authorized by the code. [Ord. 548 § 1, 1982.]

18.72.050 Manner of enforcement.

The code may be enforced in any one or combination of the following manners:

(1) Enforcement by civil penalty;

(2) Enforcement by criminal complaint; or

(3) Enforcement by civil action in King County Superior Court. [Ord. 548 § 2, 1982.]

18.72.060 Enforcement by civil penalty – Appeal.

(1) Based on a citizen complaint or at the direction of the city manager or the city council, the community development director shall investigate any structure or use that is apparently in violation of the code, and if it is determined that a violation exists, the community development director shall have a notice of violation served upon the owner, tenant, or other person responsible for the condition.

(2) The notice shall be served by personal service, registered mail, or certified mail with return receipt requested addressed to the last

known address of the owner, tenant, or other person responsible.

The notice of violation shall be posted at a conspicuous place on the property. The notice shall state separately each violation, contain a reasonable time for compliance, describe the civil penalties for failure to comply, and the appeal procedures.

(3) When calculating a reasonable time for compliance, the community development director shall take into consideration the following criteria:

(a) Type and degree of violation;

(b) Intent to comply if intent has been expressed;

(c) Procedural requirements for obtaining a permit to carry out corrective action;

(d) Complexity of corrective action;

(e) Any other circumstances beyond the control of the responsible party.

(4) The community development director may extend the date of compliance upon the receipt of a written request from the responsible person prior to the date of compliance.

(5) Any person affected by a notice of violation may file a written appeal stating in what respects the decision of the community development director is erroneous and the specific grounds for reversal or modification of the order. The appeal with the required filing fee shall be filed with the city clerk prior to 4:30 p.m. on the compliance date. In the absence of a timely appeal, the findings of the community development director contained in the notice of violation shall be deemed true and final.

(6) Jurisdiction is granted to the hearing examiner to hear and determine such appeals in accordance with the hearing examiner code. The hearing examiner may affirm, reverse, or modify the decision of the community development director; provided, that the standard of review specified by DMMC 18.94.113 shall apply.

(7) In addition to any other sanction or remedial procedure that may be available, any person failing to comply with a final order of the community development director, or, in the event of an appeal, the hearing examiner or city council, shall be subject to a cumulative penalty or forfeiture in the amount of $25.00 per day for each violation from the date set for compliance in the final order until the order is complied with; provided, however, the rate of daily penalty shall double every six months, with a maximum daily penalty of $200.00 per day for single-family residential and suburban estate zones, $300.00 per day for commercial zones, and $500.00 per day for multiple residential zones, except that owners of a single condominium unit shall be subject to a maximum daily penalty of $200.00; and provided further, that the maximum cumulative penalty shall not exceed the greater of $10,000 or the then fair-market value of the property on the date the violation or violations are perceived to exist; and finally, provided, that the property owner shall be allowed to claim a 90-day grace period from such daily penalties once in any five-year period. Jurisdiction is granted to the Des Moines municipal court to hear and determine applications for judgment, and following entry of judgment, if any, the city shall pursue collection thereof in any manner otherwise available for the collection of judgments. [Ord. 1174 § 69, 1996; Ord. 770 § 77, 1988: Ord. 684 § 2, 1987: Ord. 548 § 3, 1982.]

18.72.070 Enforcement by criminal penalties.

(1) At the conclusion of steps (1) through (7) in DMMC 18.72.060, if the city manager believes civil penalties are inadequate, he may direct the city attorney to initiate criminal proceedings.

(2) A violation of the provisions of DMMC 18.72.040 is a criminal offense. [Ord. 684 § 3, 1987: Ord. 610 § 29, 1984: Ord. 548 § 4, 1982.]

18.72.080 Enforcement by superior court civil action.

The city manager, with the consent of the city council, may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the code when civil or criminal penalties are inadequate to effect compliance. [Ord. 684 § 4, 1987: Ord. 548 § 5, 1982.]

18.72.090 Additional enforcement remedies and penalties.

(1) Remedies Cumulative. The remedies provided for herein for failure to comply with any chapter or section of this title shall be cumulative and in addition to any other remedy at law or equity.

(2) Civil Infraction. A violation of or failure to comply with any chapter or section of this title is a class 1 civil infraction and the city may enforce any chapter or section of this title and seek fines and penalties in accordance with the provisions of chapter 1.24 DMMC.

(3) Separate Offense. Each day upon which a violation of any chapter or section of this title occurs constitutes a separate offense. [Ord. 1383 § 1, 2006.]

Chapter 18.76

INTERPRETATION OF CODE

Sections

18.76.010 Interpretation.

(1) In interpreting and applying the provisions of this title they shall be held to be the minimum requirements for the promotion of the public safety, comfort, convenience, and general welfare.

(2) Interpretation of Title 14 DMMC (Buildings and Construction), Title 16 DMMC (Environment), Title 17 DMMC (Subdivisions), or Title 18 DMMC (Zoning) shall be responsibility of the community development director.

(3) Interpretations of Title 14 DMMC (Buildings and Construction), Title 16 DMMC (Environment), Title 17 DMMC (Subdivisions), or Title 18 DMMC (Zoning) may be initiated by the submittal of a written request to the city manager.

(4) Requests for interpretations of code shall be processed as a Type I land use action.

(5) The city manager shall periodically submit to the city council a summary of the interpretations requested and the corresponding interpretations made by the community development director. As needed, the summary shall include recommendations regarding the need for textual code amendments that would clarify DMMC provisions. [Ord. 1174 § 70, 1996; Ord. 175 § 1(24.64.010), 1964.]

18.76.020 Provisions not affected by headings.

Chapter and section headings contained in this title shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of any section hereof. [Ord. 175 § 1(24.64.020), 1964.]

Chapter 18.80

MAP

Sections

18.80.010 Designated.

The map filed in the city clerk's office and marked Exhibit "C" to Ordinance No. 1546 and adopted July 25, 2012, constitutes the zoning map for the city. The map referenced herein supersedes all previously adopted maps. If the designations of the map are found to be in conflict with other land use designations, the map is deemed to control. Conditional rezones or other special zoning designations shall be clearly outlined on the map along with the associated ordinance number. [Ord. 1546 § 3, 2012: Ord. 1520 § 2, 2011: Ord. 1431 § 2, 2008: Ord. 1420 § 1, 2007: Ord. 1397 § 5, 2007: Ord. 1372 § 1, 2005; Ord. 1289 § 1, 2001: Ord. 1267 § 1, 2000: Ord. 1261 § 1, 2000: Ord. 1237 § 8, 1999: Ord. 1235 § 1, 1999: Ord. 179 § 1, 1964.]

18.80.020 Land use zone regulation.

The description of the land use zones and the establishment of these zones as shown on the map are to be interpreted and regulated by the text portions of the zoning code for the city adopted by DMMC 18.02.010. [Ord. 1237 § 3, 1999; Ord. 179 § 2, 1964.]

Chapter 18.84

COMPREHENSIVE PLAN

Sections

18.84.010 Adoption of comprehensive plan.

The document consisting of 11 chapters, entitled "2009 City of Des Moines Comprehensive Plan," and attached as Exhibit "A" to Ordinance No. 1469 is adopted by reference and constitutes the comprehensive plan for the city. [Ord. 1469 § 1, 2009: Ord. 1376 § 1, 2006: Ord. 1160 § 1, 1995.]

18.84.020 Comprehensive plan filed and maintained in the office of the city clerk.

The city clerk shall file, maintain, and make available for public inspection the City of Des Moines Comprehensive Plan adopted by the ordinance codified in this chapter. [Ord. 1376 § 2, 2006: Ord. 1160 § 2, 1995.]

18.84.030 Amendment of comprehensive plan.

(1) Amendment of the City of Des Moines Comprehensive Plan shall be considered by the city council no more frequently than once every calendar year. Exceptions to this limitation are as follows:

(a) The initial adoption of a subarea plan.

(b) The adoption or amendment of the shoreline master program under the procedures set forth in chapter 90.58 RCW, as presently constituted or as may be subsequently amended.

(c) Whenever an emergency exists as declared by the city council, or to resolve an appeal.

(2) All requests for amendment of the comprehensive plan shall be considered by the city council concurrently so the cumulative effect of the various requests can be ascertained.

(3) The planning, building, and public works director shall maintain a docket of amendments to be considered by the city council during the annual amendment of the comprehensive plan.

(4) Requests for redesignation of property shall be considered and the final decision rendered prior to city council consideration of any request for reclassification of the same property. [Ord. 1376 § 3, 2006: Ord. 1174 § 88, 1996.]

18.84.040 Initiation of amendment.

Amendments to the City of Des Moines Comprehensive Plan may be initiated as follows:

(1) Application by the owner(s) of property proposed for redesignation;

(2) Adoption of a motion by the city council directing the planning, building and public works department to initiate the amendment;

(3) Adoption of a motion by the planning agency requesting the city manager to initiate the amendment through the planning, building and public works department; or

(4) The planning, building and public works department with the approval of the city manager. [Ord. 1376 § 4, 2006: Ord. 1174 § 89, 1996.]

18.84.050 Development regulations to be consistent with and implement the City of Des Moines Comprehensive Plan.

(1) For the purpose of compliance with RCW 36.70A.040(3)(d) as presently constituted or as may be subsequently amended, the development regulations contained in chapters 10.28 (Weight Limits) and 12.04 (Right-of-Way Use Code) DMMC, Titles 17 (Subdivisions) and 18 (Zoning) DMMC, and chapter 19.20 DMMC (Parks of Local Significance) on the date the ordinance codified in this section is adopted are hereby adopted as Des Moines' development regulations that are consistent with and implement the City of Des Moines Comprehensive Plan.

(2) Future amendments of city development regulations shall be consistent with the City of Des Moines Comprehensive Plan.

(3) Where the City of Des Moines Comprehensive Plan and development regulations adopted by subsection (1) of this section are in conflict, or in the absence of applicable development regulations, the goals, findings, policies and strategies of the City of Des Moines Comprehensive Plan shall prevail. [Ord. 1376 § 5, 2006: Ord. 1185 §§ 1, 2, 3, 1997.]

18.84.060 Schedule for initiation and review of amendments.

(1) Applications for amendment of the City of Des Moines Comprehensive Plan may be submitted to the planning, building and public works department between January 1st and June 30th of each calendar year.

(2) Applications for amendment of the City of Des Moines Comprehensive Plan that do not require an environmental impact statement as determined by the planning, building and public works director shall be acted upon by the planning agency and the city council between September 1st and December 31st of the calendar year of application. In the event the city council cannot act upon the applications for amendment by December 31st of the calendar year, the city council may extend its review to the following calendar year.

(3) Applications for amendment of the City of Des Moines Comprehensive Plan that require an environmental impact statement as determined by the planning, building and public works director may be acted upon by the planning agency and city council between September 1st and December 31st of the year following completion of the environmental impact statement.

(4) By resolution, the city council may adopt an alternative review schedule from the schedule specified by this section for a particular calendar year. [Ord. 1376 § 6, 2006: Ord. 1193 § 1, 1997.]

18.84.070 Contents of application for amendment.

(1) Application for amendment of the City of Des Moines Comprehensive Plan shall be submitted in writing to the planning, building and public works department. Every application for amendment shall include all of the following information:

(a) A completed application form as provided by the planning, building and public works director.

(b) For an amendment of the text of the City of Des Moines Comprehensive Plan, the requested change(s) shall be shown in legislative format (strikeouts and underlining).

(c) For an amendment of the preferred land use maps within the land use element, the request shall include a legal description of the subject property area and a parcel map identifying the subject property.

(d) An explanation of why the amendment is being proposed.

(e) The application fee as specified by the planning, building and public works department fee schedule.

(2) The following information may also be required as determined by the planning, building and public works director:

(a) A completed SEPA checklist with the applicable fee as specified by the planning, building and public works department fee schedule.

(b) Property owner and tenant information as specified by DMMC 16.04.160(5) (Public notice procedure – Notice of DNS, mitigated DNS, or DS).

(c) One or more public notice signs as specified by DMMC 16.04.160(1) (Public notice procedure – Notice of DNS, mitigated DNS, or DS).

(d) One or more special studies, special public notice provisions, or other information as necessary to review and process the proposed amendment.

(3) Separate applications shall be required when the proposed amendment addresses more than one issue or policy, as determined by the planning, building and public works director.

(4) The applicant shall be responsible for and may be required to reimburse the city for administrative costs associated with proposed amendments including special studies, staff review, mapping, printing, public notice, etc., as determined by the planning, building and public works director.

(5) The planning, building and public works director may waive specific submittal requirements determined to be unnecessary for review of an application.

(6) The planning, building and public works director with the approval of the city manager may alter a privately initiated amendment relating to a specific property in order to allow the consideration of nearby property, similarly situated property, or area-wide impacts. [Ord. 1376 § 7, 2006: Ord. 1193 § 2, 1997.]

18.84.080 Decision criteria.

(1) Amendment of the City of Des Moines Comprehensive Plan is a legislative action (Type VI land use action) and the planning agency and the city council shall be afforded the broadest possible discretion during review of amendment requests. The planning agency may recommend approval, approval with modifications, or denial of any application for amendment. The city council may approve, approve with modifications, or deny any application for amendment.

(2) The planning agency may recommend and the city council may approve or approve with modifications an amendment to the City of Des Moines Comprehensive Plan when:

(a) The amendment would correct a technical error; or

(b) The amendment addresses changing circumstances or the needs of the city as a whole, and will benefit the city as a whole; and

(c) All of the following conditions are satisfied:

(i) The amendment is consistent with the Growth Management Act.

(ii) The amendment is not inconsistent with other elements or policies of the City of Des Moines Comprehensive Plan.

(iii) The amendment will not adversely impact community facilities and bears a reasonable relationship to public health, safety, and welfare.

(iv) For amendments relating to a specific property:

(A) The amendment is compatible with adjacent land use and the surrounding development pattern as existing or as specified by the City of Des Moines Comprehensive Plan; and

(B) The subject property is suitable for development as allowed by the development regulations of the potential zone.

(3) During the review of a proposed amendment to the City of Des Moines Comprehensive Plan, factors that may be considered by the planning, building and public works director, planning agency, and the city council include, but are not limited to, the following:

(a) The effect upon the physical environment.

(b) The effect upon the economic environment.

(c) The effect upon the social environment.

(d) The effect upon open space, surface waters, and environmentally critical areas.

(e) The effect upon parks of local significance.

(f) The effect upon historic and archaeological resources of local significance.

(g) The compatibility with an impact upon adjacent land uses and surrounding neighborhoods.

(h) The adequacy of and impact upon capital facilities, utilities, and public services.

(i) The quantity and location of land planned for the proposed land use type and density.

(j) The current and forecasted population in the area or city.

(k) The effect upon other aspects of the city or the City of Des Moines Comprehensive Plan. [Ord. 1376 § 8, 2006: Ord. 1237 § 3, 1999; Ord. 1193 § 3, 1997.]

18.84.090 Comprehensive plan amendments.

There is adopted by reference a comprehensive plan, on file with the city clerk, as subsequently amplified, augmented and amended pursuant to the provisions in this title, as identified below.

(1) Chapter 1: General Planning Element.

(a) 2010 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1499.

(2) Chapter 2: Land Use Element.

(a) 2009 Amendments: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1469.

(b) 2010 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1499.

(c) 2011 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1528.

(d) 2012 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1532.

(e) 2012 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1551.

(3) Chapter 3: Transportation Element.

(a) 2009 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1469.

(b) 2010 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1499.

(c) 2012 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1532.

(4) Chapter 4: Conservation Element.

(a) 2010 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1499.

(5) Chapter 5: Capital Facilities, Utilities, and Public Services Element.

(a) 2009 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1469.

(b) 2010 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1499.

(6) Chapter 6: Parks, Recreation, and Open Space Element.

(a) 2009 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1469.

(b) 2010 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1499.

(c) 2012 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1532.

(d) 2012 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1551.

(7) Chapter 7: Housing Element.

(a) 2010 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1499.

(b) 2012 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1532.

(8) Chapter 8: Community Character Element.

(9) Chapter 9: North Central Neighborhood Element.

(10) Chapter 10: Marina District Element.

(a) 2009 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1469.

(b) 2010 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1499.

(11) Chapter 11: Pacific Ridge Element.

(a) 2009 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1469.

(b) 2010 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1499.

(12) Chapter 12: Healthy Des Moines Element.

(a) 2012 Amendment: Selective portions of this element of the comprehensive plan are amended as described in Exhibit "A" to Ordinance No. 1532.

(13) Appendix A: Des Moines Housing and Population Data.

(14) Appendix B: City of Des Moines Buildable Lands Report (2002-2012) and Household Growth Targets (2002-2022).

(15) Appendix C: Proposed Comprehensive Plan Review Schedule. [Ord. 1551 § 1, 2012: Ord. 1532 § 1, 2012: Ord. 1528 § 1, 2011: Ord. 1499 § 1, 2010: Ord. 1469 § 2, 2009.]

18.84.100 Preferred land use map designation.

The map filed in the city clerk's office and marked Exhibit "B" to Ordinance No. 1469 and adopted November 12, 2009, as amended by Exhibit "B" to Ordinance No. 1528, is amended as described in Exhibit "B" to Ordinance No. 1551, and constitutes the comprehensive land use map, also referred to as the preferred land use map, for the city. The map referenced herein supersedes all previously adopted preferred land use maps. [Ord. 1551 § 2, 2012: Ord. 1528 § 2, 2011: Ord. 1469 § 3, 2009.]

Chapter 18.86

ENVIRONMENTALLY CRITICAL AREAS[1]

Sections

1. Code reviser's note: DMMC 18.86.075 – 18.86.080 are former DMMC 18.86.080. DMMC 18.86.092 – 18.86.107 are former DMMC 18.86.100.

18.86.010 Adoption by reference.

The codes, standards, rules, and regulations adopted by this chapter are adopted by reference thereto as though fully set forth in this title. Not less than one copy of each such codes, standards, rules, and regulations, in the form in which it was adopted, and suitably marked to indicate amendments, additions, deletions and exceptions as provided in this chapter, shall be filed with the planning, building and public works department and be available for use and examination by the public. [Ord. 1400 § 11, 2007.]

18.86.020 City council findings.

The city council finds that:

(1) Development in wetlands results in:

(a) Increased soil erosion and sedimentation of downstream water bodies;

(b) Degraded water quality from increased sedimentation;

(c) Degraded water quality from loss of pollutant removal process of wetlands – sediment trapping, nutrient removal, and chemical detoxification;

(d) Elimination of wildlife and fisheries habitat. Wetland ecosystems support a diverse, unique, and rich group of flora and fauna. Habitat is especially productive at the interface between water and land ecosystems. Several wildlife species specifically require wetland habitats for breeding, nesting, rearing of young, and feeding;

(e) Loss of ground water discharge and recharge areas;

(f) Loss of storm water retention and detention capacity resulting in increased flooding, degraded water quality, and changes in the streamflow regimen of watersheds;

(g) Loss of slow-release detention resulting in loss of recharge to base flow of stream systems during low flow periods and increased peak flows and flooding during storm events; and

(h) Loss of fishery resources from water quality degradation, increased peak flow rates, decreased summer low flows, and changes in the streamflow regimen.

(2) Development in stream corridors results in:

(a) Siltation of streams, which destroys spawning beds, kills fish eggs and alevins, irritates fish gills, reduces aquatic insect populations, fills stream channels, and causes flooding;

(b) Loss of stream corridor vegetation, which raises stream temperatures, destabilizes stream banks, causes erosion, removes nutrients by removing source of fallen leaves and streamside insects, increases sedimentation, and reduces recruitment of large wood debris necessary for stream structure;

(c) Elimination of wildlife and fish habitat. The stream corridor is especially sensitive and is recognized as being among the most productive terrestrial and aquatic ecosystems. It usually provides all four of the basic habitat components: water, food, cover, and space. The stream corridor is usually richer in habitat diversity and, consequently, wildlife diversity and numbers of individuals are higher than in adjoining upland plant communities. Certain fish and wildlife species are totally dependent on the stream corridor and as uplands are developed, stream corridors

become a place of refuge for many wildlife species;

(d) Increased peak flow rates and decreased summer low flow rates of streams, resulting in negative impacts to the physical and chemical requirements critical for sustained fish populations;

(e) Stream channelization, which increases current velocity and bank erosion, removes critical fish rearing and spawning habitat, and reduces habitat diversity and simplifies the biotic community;

(f) Piping of streamflow and crossing of streams by culverts, which increases potential for downstream flooding, reduces migratory fishery range and, therefore, fish populations, removes habitat, and eliminates the biotic community; and

(g) Construction near or within streams, which adversely impacts fish and wildlife by destroying habitat and degrading water quality and increases potential for flooding, property damage, and risk to public health, safety, and welfare.

(3) Development on hillsides results in:

(a) The loss of slope and soil stability as well as increased erosion. The removal of vegetation from hillsides deprives the soil of the stabilizing function of roots, and the moderating effects on wind and water erosion of leaves and branches. Loss of soil stability increases erosion and thus lowers downstream water quality as a result of siltation. Downstream wetlands can be injured in this way. Strong rains on unstable slopes can produce mass movements, such as landslides, slumps, and flaws, particularly in steeply sloping areas;

(b) Increased runoff. Development may alter the natural drainage pattern of a hillside, producing increased runoff and erosion. Removal of vegetative cover decreases percolation of precipitation into the soil, thereby reducing the amount of ground water recharge and adding water to runoff that would ordinarily be transpired by trees, shrubs, and ground covers. Construction of impervious surfaces, such as roads, parking lots, and buildings, decreases the amount of ground water percolation and thus increases the amount of runoff. Increased runoff, in addition to producing intensified erosion, also creates downstream flood hazards;

(c) Destruction of the community's aesthetic resources. The hillsides of Des Moines mark the boundaries of several neighborhoods, lend natural character and distinctive features to the city, and provide open space and viewing points of remarkable vistas. They are also often associated with stream corridors and wetlands of the city. Degradation of hillsides resulting from erosion, mass movement, loss of vegetation, and damage to downstream areas deprives Des Moines of its attractive and distinctive setting, and decreases real estate values; and

(d) Major public expenditures to repair facility damages and protect against future damages due to instability created or exacerbated by development. [Ord. 1400 § 12, 2007.]

18.86.030 Purpose.

Geologically hazardous areas, hillsides, wetlands, areas of special flood hazard, fish and wildlife habitat conservation areas, aquifer recharge areas and streams, and the buffers of these areas as defined in chapter 18.04 DMMC, together constitute critical areas that are of special concern to the city. The purposes of this chapter are to protect the public health, safety, and welfare by preventing the adverse environmental impacts of development listed in DMMC 18.86.020, and by:

(1) Preserving, protecting, and restoring the functions and values of critical areas by regulating development within them and their buffers;

(2) Protecting the public from damage due to flooding, landslides, subsidence, and erosion;

(3) Preventing adverse impacts to ground and surface water quality, wetlands, tidelands, streams, stream corridors, and fish and wildlife habitat;

(4) Protecting the public against loss from:

(a) Unnecessary maintenance and replacement of public facilities;

(b) Publicly funded mitigation of avoidable impacts;

(c) Cost for public emergency rescue and relief operations; and

(d) Potential litigation from improper construction practices authorized for critical areas;

(5) Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of critical areas;

(6) Providing city officials with information to approve, condition, or deny public or private development proposals;

(7) Providing predictability and consistency to city environmental review procedures;

(8) Protecting sensitive, unique, fragile, and valuable features of the city's environment;

(9) Adopting a goal of no overall net loss of wetland and stream functions and values; and the long-term goal to increase the quantity and quality of Washington's wetlands and streams;

(10) Implementing the policies of the State Environmental Policy Act (chapter 43.21C RCW), Puget Sound Water Quality Management Plan, Washington State Executive Order 90-04, chapter 16.04 DMMC, the Des Moines Comprehensive Plan, shoreline master program, and all other present and future city functional and community plans and programs as presently constituted or as may be subsequently amended; [and]

(11) Provide for mitigation of potential impacts to critical areas using the following descending order of preference:

(a) Avoid the impact altogether by not taking a certain action or parts of an action;

(b) Minimize impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impact;

(c) Rectify the impact by repairing, rehabilitating, or restoring the affected environmentally critical areas;

(d) Reduce or eliminate the impact over time by prevention and maintenance operations during the life of the actions;

(e) Compensate for the impact by replacing, enhancing, or providing substitute environmentally critical areas and environments; and

(f) Monitor the impact and take appropriate corrective measures.

(12) Sources for attaining maps to determine where critical fish and wildlife habitats occur and the species that are present include:

- Washington Department of Fish and Wildlife Priority Habitat and Species maps;
- Washington State Department of Natural Resources official water type reference maps, as amended;
- Washington State Department of Natural Resources Puget Sound Intertidal Habitat Inventory maps;
- Washington State Department of Natural Resources Shorezone Inventory maps;
- Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors reports published by the Washington Conservation Commission;
- Washington State Department of Health Annual Inventory of Shellfish Harvest Areas;
- Washington State Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps;
- Washington State Department of Natural Resources Natural Heritage Program mapping data;
- Any local city of Des Moines or King County maps available. [Ord. 1400 § 13, 2007.]

18.86.040 Applicability.

(1) All development proposals in critical areas, whether public or private, except city activities related to routine maintenance of public ways, shall comply with the requirements and purposes of this chapter. The city manager or designee is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter. Responsibility for enforcement of the provisions of this chapter shall rest with the city manager or designee.

(2) For the purposes of this chapter, development proposals include proposals that require any of the following: right-of-way permit; building permit; land clearing, grading, or filling permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; conditional use permit; unclassified use permit; variance; zone reclassification; planned unit development; subdivision; short subdivision; any other land use approvals required by this code or the RCW.

(3) Prior to construction activity that would occur in, be adjacent to, or would likely affect critical areas, a review outlined by this chapter shall occur prior to the issuance of the necessary permit. [Ord. 1400 § 14, 2007.]

18.86.050 Special studies required.

When an applicant submits an application for any development proposal the application shall indicate whether any critical area is located on the site. The city manager or designee shall visit the subject property and review the information submitted by the applicant along with any other available information. If the city manager or designee determines that sufficient environmental information to evaluate a proposal is not available, the city manager or designee shall notify the applicant that special environmental studies are required. Special environmental studies shall include a comprehensive site inventory and analysis, a discussion of potential impacts from the proposed development, and specific measures designed to mitigate any potential adverse environmental impacts of the applicant's proposal, on- and off-site. The city manager or designee shall develop and maintain a detailed list of required study contents. All special studies shall be funded by the applicant and conducted under the direct supervision of the planning, building and public works department. [Ord. 1400 § 15, 2007.]

18.86.060 Maps and inventories.

(1) The general distribution of critical areas in the city and its planning area is displayed by a series of maps within the conservation element of the Des Moines Comprehensive Plan. These maps shall be used to alert the public and city officials of the potential presence of critical areas on-site or off-site of a development proposal.

(2) Information provided by the maps of critical areas shall be used for general informational and illustrative purposes only. In cases of mapping error and recognizing that critical areas are dynamic environmental processes, the actual presence and location of critical areas, as determined by qualified professional and technical scientists, shall govern the treatment of a proposed development site. [Ord. 1400 § 16, 2007.]

18.86.070 Best management practices required.

All allowed activities under this chapter shall be conducted using the best management practices, adopted pursuant to the King County Surface Water Design Manual, that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The city shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense. [Ord. 1400 § 17, 2007.]

18.86.080 Development restrictions.

(1) Undevelopable Environmentally Critical Areas. The following environmentally critical areas shall remain undeveloped except as otherwise provided in DMMC 18.86.280.

(a) Wetlands and Their Buffers. The edge of the wetland and the outside edge of its buffer shall be determined and field marked by a professional wetland biologist or similarly qualified professional;

(b) Streams and Their Buffers. The top of the upper bank of the streams and the outside edge of its buffer shall be determined and field marked by a professional biologist, ecologist, or similarly qualified professional; and

(c) Ravine Sidewalls and Bluffs and Their Buffers. The top, toe, and edges of

ravine sidewalls and bluffs, and the outside edge of their buffers, shall be determined and field marked by a qualified geotechnical engineer or similarly qualified professional.

(2) Developable Critical Areas. Critical aquifer recharge areas, areas of special flood hazard, fish and wildlife habitat conservation areas, and hillsides other than ravine sidewalls and bluffs are developable pursuant to the provisions of this chapter. The applicant shall clearly and convincingly demonstrate to the satisfaction of the city manager or designee that the proposal incorporates measures protecting the public health, safety, and welfare. [Ord. 1400 § 18, 2007.]

18.86.090 Development standards – Compliance – Requirements.

If a proposed project is within, adjacent to, or is likely to impact a critical area, all activities on the site shall be in compliance with the requirements and restrictions set forth in DMMC 18.86.100 through 18.86.260. [Ord. 1400 § 19, 2007.]

18.86.100 Wetlands – Development standards.

If a wetland is located on or contiguous to the site of a development proposal, all activities on the site shall be in compliance with the following requirements and restrictions:

(1) General Performance Requirements.

(a) Activities may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not degrade the functions and functional performance of the wetland.

(b) Activities and uses shall be prohibited in wetlands and wetland buffers, except as provided for in this chapter.

(c) Category I Wetlands. Activities and uses shall be prohibited from Category I, except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of this chapter.

(d) Category II and III Wetlands. With respect to activities proposed in Category II and III wetlands, the following standards shall apply:

(i) Where wetland fill is proposed, activities and uses shall be prohibited unless the applicant can demonstrate that:

(A) The basic project purpose cannot reasonably be accomplished on another site or sites in the general region while still successfully avoiding or resulting in less adverse impact on a wetland; and

(B) All on-site alternative designs that would avoid or result in less adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration or density of the project, are not feasible. Compensation for the loss of acreage and functions of wetland and buffers shall be provided under the terms established under DMMC 18.86.130.

(e) Category IV Wetlands. Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved special environmental study and mitigation plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives. Compensation for the acreage and loss functions will be provided under the terms established under DMMC 18.86.130.

(2) Wetland Buffers. The following standard buffers shall be established from the wetland edge as delineated and marked in the field:

	Width of Buffer (feet)
Category I Wetlands	
High habitat function (habitat score 29-36)	300
Moderate habitat function (habitat score 20-28)	150
High water quality function and low habitat function or none of the above characteristics (habitat score less than 20)	100

	Width of Buffer (feet)
Category II Wetlands	
High habitat function (habitat score 29-36 points)	300
Moderate habitat function (habitat score 20-28)	150
High water quality function and low habitat function or none of the above characteristics (habitat score less than 20)	100
Category III Wetlands	
Moderate habitat function (habitat score 20-28)	150
Low habitat or not meeting above criteria (habitat score less than 20)	80
Category IV Wetlands	
Low functions	50

Note: Removed information and buffers associated with the following wetlands that are not relevant to Des Moines: Category I – Natural Heritage, bogs, estuarine, and wetlands in coastal lagoons and Category II – Estuarine and Interdunal.

(a) Where a legally established and constructed street transects a wetland buffer, the city manager or designee may approve a modification of the standard buffer width to the edge of the right-of-way if the isolated part of the buffer does not provide additional protection of the wetland and provides insignificant biological, geological or hydrological buffer functions relating to the wetland. If the resulting buffer distance is less than 50 percent of the standard buffer for the applicable wetland category, no further reduction shall be allowed through wetland buffer reduction or averaging.

(b) Where a buffer has been previously established through city or county development review, and is permanently recorded on title or placed within a separate tract, the buffer shall be as previously established.

(3) Building Setback Lines. A building setback line of 10 feet is required from the edge of any wetland buffer. Minor structural intrusions into the area of the building setback line may be allowed if the city manager or designee determines that such intrusions will not negatively impact the critical area.

(4) Increased Wetland Buffers. The city manager or designee may require either additional native vegetation to achieve purposes of this chapter or increased buffer sizes when environmental information indicates the necessity for greater buffers to protect critical area functions, values, or hazards based on site-specific conditions. This determination shall be supported by appropriate documentation showing that additional buffer width is reasonably related to protection of critical area functions and values, or protection of public health, safety and welfare. Such determination shall be attached as permit conditions. The determination shall demonstrate that at least one of the following criteria are met:

(a) There is habitat for species listed as threatened or endangered by state or federal agencies present within the environmentally critical area and/or its buffer, and additional buffer is necessary to maintain a viable functional habitat; or

(b) There are conditions or features adjacent to the buffer, such as steep slopes or erosion hazard areas, which over time may pose an additional threat to the viability of the buffer or buffers, if any, associated with the conditions or feature posing the threat in addition to, or to a maximum, beyond the buffer required for the subject critical area.

(c) In cases where additional buffers are not feasible, the city manager or designee may require the applicant to undertake alternative on-site or off-site mitigation measures, including but not limited to a financial contribution to projects or programs which seek to improve environmental quality within the same watershed.

(5) Wetland Buffer Averaging. The city manager or designee may allow modification of the standard wetland buffer width in accordance with an approved special environmental study and the best available science on a case-

by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified professional wetland scientist demonstrates that:

(a) It will not reduce wetland functions or functional performance;

(b) The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

(c) The total area contained within the buffer after averaging is no less than that which would be contained within the standard buffer; and

(d) The buffer width is not reduced to less than 75 percent of the standard width.

(6) Wetland Buffer Reduction. The city manager or designee may allow reduction of the required wetland buffer widths when accompanied by a special study that identifies appropriate mitigation strategies. Reduction of wetland buffer widths may be allowed where a qualified professional wetland scientist demonstrates that:

(a) The reduction in buffer width based on reducing the intensity of impacts from proposed land uses. Buffer widths required for proposed land uses with high-intensity impacts to wetlands may be reduced to those recommended for moderate-intensity impacts under the following conditions:

(i) For wetlands that score moderate or high for habitat (20 points or more for the habitat functions), the width of the buffer can be reduced if both of the following criteria are met:

(A) A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other priority habitats as defined by the Washington State Department of Fish and Wildlife. The corridor must be protected for the entire distance between the wetland and the priority habitat by some type of legal protection such as a conservation easement.

(B) Measures to minimize the impacts of different land uses on wetlands, such as the examples summarized in Table 8C-8 from "Wetlands in Washington State: Volume 2 – Protecting and Managing Wetlands" (Ecology, 2005), are applied.

(ii) For wetlands that score less than 20 points for habitat, the buffer width can be reduced to that required for moderate land-use impacts by applying measures to minimize the impacts of the proposed land uses. Measures include but are not limited to the following: direct light and noise away from wetlands, route untreated runoff away from wetlands, apply an integrated pest management program, use privacy fencing or vegetative buffer to delineate the wetland buffer edge and discourage disturbance, and use best management practices to control dust (see examples in Table 8C-8).

(b) Reductions in buffer widths where existing roads or structures lie within the buffer. Where a legally established, nonconforming use of the buffer exists (e.g., a road or structure that lies within the width of buffer recommended for that wetland), proposed actions in the buffer may be permitted as long as they do not increase the degree of nonconformity, or if no reasonable alternative exists. This means no increase in the impacts to the wetland from activities in the buffer. [Ord. 1400 § 20, 2007.]

18.86.110 Wetlands – Reasonable use exceptions.

(1) Adjustments to Dimensional Requirements.

(a) Yard Reductions for Building One Single-Family Dwelling. The city manager or designee may allow modification to the required front, rear, or side yard on the opposite of the wetland. The reductions must meet the following standards:

(i) The wetland, wetland buffer and required yard area opposite the wetland equals more than 50 percent of the property dimension of the development site.

(ii) A required side yard is reduced to five feet.

(iii) A required front or rear yard is reduced to 10 feet.

(2) Single-Family Dwelling. Development of one single-family dwelling within the buffer of a wetland on a development site shall be approved by the city manager or designee if the applicant demonstrates that:

(a) The extent of development within the buffer is limited to that which is necessary to create a developable area which is no larger than 4,000 square feet;

(b) The proposal utilizes to the maximum extent possible the best available construction, design, and development techniques which result in the least adverse impact on the critical area;

(c) The proposal incorporates the development standards of DMMC 18.86.100 through 18.86.130 and the surface water design manual to the maximum extent possible; and

(d) The proposal is consistent with the purpose and intent of this chapter. [Ord. 1400 § 21, 2007.]

18.86.120 Wetlands – Limited exemptions.

The city manager or designee may allow exemptions from the provisions of this chapter based on the following criteria:

(1) Wetlands larger than 4,000 square feet will be evaluated using standard procedures for wetland review.

(2) Wetlands between 1,000 and 4,000 square feet shall be evaluated using the Washington State Wetland Rating System for Western Washington (Hruby, 2004, or as revised) to establish category and evaluate functions. The following criteria and local knowledge of natural resources shall be used to determine whether to exempt wetlands between 1,000 and 4,000 square feet from the requirement to avoid impacts.

(a) The requirement to avoid impacts may be dropped for Category III and IV wetlands between 1,000 and 4,000 square feet that meet all of the following criteria:

(i) Wetland is not associated with a riparian corridor; and

(ii) Wetland is not part of a wetland mosaic; and

(iii) Wetland does not score 20 points or more for habitat in the wetland rating system; and

(iv) Wetland does not contain habitat identified as essential for local populations of priority species identified by [the] Washington Department of Fish and Wildlife.

(b) Impacts allowed under this provision to these wetlands will be fully mitigated as set forth in DMMC 18.86.130.

(c) All Category I and II Wetlands between 1,000 and 4,000 square feet should be evaluated with full mitigation sequencing and buffer establishment. Any approved impacts should be adequately compensated by mitigation as set forth in DMMC 18.86.130.

(3) Wetlands less than 1,000 square feet shall be exempt from regulation where the applicant has shown that they:

(a) Are not associated with a riparian corridor;

(b) Are not part of a wetland mosaic; and

(c) Do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife. [Ord. 1400 § 22, 2007.]

18.86.130 Wetlands – Mitigation reqnirements.

(1) Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with the Guidance on Wetland Mitigation in Washington State – Part 2: Guidelines for Developing Wetland Mitigation Plans and Proposals, April 2004 (Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10; Ecology Publication No. 04-06-013b), or as revised.

(2) Mitigation shall be required in the following order of preference:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps such as

project redesign, relocation, or timing, to avoid or reduce impacts.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations.

(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.

(f) Monitoring the required compensation and taking remedial or corrective measures when necessary.

(3) Compensating for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

(a) The lost wetland provides minimal functions as determined by a site-specific function assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington State watershed assessment plan or protocol; or

(b) Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the city, such as replacement of historically diminished wetland types.

(4) Preference of Mitigation Actions. Methods to achieve compensation for wetland functions shall be approached in the following order of preference:

(a) Restoration (re-establishment and rehabilitation) of wetlands.

(b) Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. This should only be attempted when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is anticipated in the design.

(c) Enhancement of significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.

(5) Type and Location of Compensatory Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach, sub-basin, or drift cell (if estuarine wetlands are impacted). Compensatory mitigation actions shall be conducted within the same sub-drainage basin and on the site of the alteration except when all of the following apply:

(a) There are no reasonable on-site or in sub-drainage basin opportunities (e.g., on-site options would require elimination of high-functioning upland habitat), or on-site and in sub-drainage basin opportunities do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);

(b) Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and

(c) Off-site locations shall be in the same sub-drainage basin unless:

(i) Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the city and strongly justify location of mitigation at another site; or

(ii) Credits from a state-certified wetland mitigation bank are used as compensation and the use of credits is consistent with the terms of the bank's certification.

(d) The design for the compensatory mitigation project needs to be appropriate for

its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which required the construction of berms to hold the water.

(6) Timing of Compensatory Mitigation. It is preferred that compensatory mitigation projects be completed prior to activities that will disturb the on-site wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora. The city manager or designee may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window; or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the compensatory mitigation plan. The justification must be verified and approved by the city.

(7) Mitigation Ratios. The following ratios shall apply to creation or restoration that is in-kind, is on-site, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Wetland Mitigation Ratios

	Enhancement	Rehabilitation	Creation
Category I	6:1	4.5:1	3:1
Category II	3:1	2:1	1.5:1
Category III	2:1	1.5:1	1:1
Category IV	1.5:1	1:1	1:1

(a) The mitigation ratio is the acreage required for compensatory mitigation divided by the acreage of impact.

(b) The ratios are for a concurrent compensatory mitigation project. If the impacts to a wetland are to be mitigated by using an approved and established mitigation bank, the rules and ratios applicable to the bank should be used.

(c) The ratios are based on the assumption that the category, based on wetland ratings established in DMMC 18.04.663, and hydrogeomorphic (HGM) class/subclass of the wetland proposed as compensation are

the same as the category and HGM class/subclass of the wetland impacts.

(d) Ratios for projects in which the category and HGM class/subclass of wetlands proposed as compensation is not the same as that of the wetland impacts will be determined on a case-by-case basis using the recommended ratios as a starting point. The ratios could be higher in such cases.

(e) Creation can be used in combination with rehabilitation or enhancement. For example, two acres of impact to a Category II wetland would require two acres of creation (i.e., replacing the lost acreage at a 1:1 ratio); the remaining one acre of creation necessary to compensate for impact could be substituted with one and one-half acres of rehabilitation or three acres of enhancement.

(f) Generally the use of enhancement alone as compensation is discouraged. Using enhancement in combination with some amount of creation is preferred.

(8) Preservation. Impacts to wetlands may be mitigated by preservation of wetland areas when used in combination with other forms of mitigation such as creation, restoration, or enhancement. Preservation may also be used by itself, but more restrictions apply as outlined below.

(a) Acceptable Uses of Preservation. The preservation of at-risk, high quality wetlands and habitat may be considered as part of an acceptable mitigation plan when the following criteria are met:

(i) Preservation is used as a form of compensation only after the standard sequencing of mitigation (avoid, minimize, and then compensate). See subsection (2) of this section;

(ii) Restoration (re-establishment and rehabilitation), creation, and enhancement opportunities have also been considered, and preservation is proposed by the applicant and approved by the permitting agencies as the best compensation option;

(iii) The preservation site is determined to be under imminent threat; that is, the site has the potential to experience a high rate of undesirable ecological change due to on-site or off-site activities that are not regulated (e.g., logging of forested wetlands). This potential includes permitted, planned, or likely actions;

(iv) The area proposed for preservation is of high quality or critical for the health of the watershed or basin due to its location. Some of the following features may be indicative of high quality sites:

(A) Category I or II wetland rating;

(B) Rare or irreplaceable wetland type (e.g., bogs, mature forested wetlands, estuaries) or aquatic habitat that is rare or a limited resource in the area;

(C) Habitat for threatened or endangered species;

(D) Provides biological and/or hydrological connectivity;

(E) High regional or watershed importance (e.g., listed as priority site in a watershed or basin plan);

(F) Large size with high species diversity (plants and/or animals) and/or high abundance of native species;

(G) A site that is continuous with the head of a watershed, or with a lake or pond in an upper watershed that significantly improves outflow hydrology and water quality.

(b) Preservation in Combination with Other Forms of Compensation. Using preservation as compensation is acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of 1:1 acreage replacement is provided by reestablishment or creation and the criteria below are met:

(i) All criteria listed in subsection (8)(a) of this section are met;

(ii) The impact area is small and/or impacts are occurring to a low functioning system (Category III or IV wetland);

(iii) Preservation of a high-quality system occurs in the same watershed or basin as the wetland impact;

(iv) Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation; and

(v) Mitigation ratios for preservation in combination with other forms of mitigation shall range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being impacted and the quality of the wetlands being preserved.

(c) Preservation as the Sole Means of Compensation for Wetland Impacts. Preservation alone shall only be used as compensatory mitigation in exceptional circumstances. Preservation alone shall not apply if impacts are occurring to functions that must be replaced on-site, such as flood storage or water quality treatment that need to be replicated by water quality measures implemented within the project limits. Preservation of at-risk, high-quality wetlands and habitat (as defined above) may be considered as the sole means of compensation for wetland impacts when the following criteria are met:

(i) All criteria listed in subsections (8)(a) and (8)(b) of this section are met;

(ii) There are no adverse impacts to habitat for fish and species listed as endangered and threatened;

(iii) There is no net loss of habitat functions within the watershed or basin;

(iv) Higher mitigation ratios are applied. Mitigation ratios for preservation as the sole means of mitigation shall generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost.

(9) Wetland Mitigation Banks.

(a) Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

(i) The bank is certified under Chapter 173-700 WAC;

(ii) The city manager or designee determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

(iii) The proposed use of credits is consistent with the terms and conditions of the bank's certification.

(b) Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.

(c) Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

(10) Substitute Fees. In cases where the applicant demonstrates to the satisfaction of the city manager or designee that a suitable compensation site does not exist, the city manager or designee may allow the applicant to make a financial contribution to a water quality project or program performing critical areas enhancement, restoration, or mitigation. The project or program must improve environmental quality within the same watershed as the altered wetland. The amount of the fee shall be determined by the city manager or designee and shall be equal to the cost of mitigating the impact of the wetland alteration.

(11) Mitigation Plan Requirements. When mitigation is required, the applicant shall submit for approval a mitigation plan prepared by a qualified scientist(s) following procedures set forth in the state Department of Ecology Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, 2004, or as revised.

(12) Final Approval. The city manager or designee shall grant final approval of a completed compensation project if the final report of the project mitigation plan satisfactorily documents that the area has achieved all requirements of this section and DMMC 18.86.290. [Ord. 1400 § 23, 2007.]

18.86.140 Streams – Development standards.

If a stream is located on or contiguous to the site of a development proposal, all activities on the site shall be in compliance with the following requirements and restrictions:

(1) Stream Buffers. The following standard buffers shall be measured from the ordinary high water mark or from the top of the

bank if the ordinary high water mark cannot be identified:

Water Type	Buffer Width (feet)
Types S or F	115
Types Np or Ns	65

Type S: streams inventoried as "shorelines of the state" under the city's shoreline master program.

Type F: streams that are salmonid-bearing or have the potential to support salmonids.

Type Np: streams that are perennial during a year of normal rainfall and do not have the potential to support salmonids use.

Type Ns: streams that are seasonal or ephemeral during a year of normal rainfall and do not have the potential to support salmonids use.

(a) Where a legally established and constructed street transects a stream buffer, the city manager or designee may approve a modification of the standard buffer width to the edge of the street if the isolated part of the buffer does not provide additional protection of the stream and provides insignificant biological, geological or hydrological buffer functions relating to the stream. If the resulting buffer distance is less than 50 percent of the standard buffer, no further reduction shall be allowed.

(b) Where a buffer has been previously established through city or county development review, and is permanently recorded on title or placed within a separate tract, the buffer shall be as previously established, provided it is at least 50 percent of the required standard buffer distance.

(c) Any stream relocated or altered as part of approved mitigation measures shall have at least the minimum buffer required for the type of stream involved.

(d) If the stream buffer includes a steep slope hazard area or landslide hazard area, the stream buffer width is the greater of either the stream buffer in this section or 25 feet beyond the top of the hazard area.

(e) Any stream adjoined by a riparian wetland or other contiguous critical area shall have the buffer required for the stream type involved or the buffer that applies to the wetland or other critical area, whichever is greater.

(2) Increased Stream Buffer. The city manager or designee shall require increased buffer widths in accordance with the recommendations of a qualified biologist and the best available science on a case-by-case basis when a larger buffer is necessary to protect stream functions and values based on site-specific characteristics.

This determination shall be based on one or more of the following criteria:

(a) A larger buffer is needed to protect other critical areas;

(b) The buffer or adjacent upland has a slope greater than 30 percent or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland.

(c) In cases where additional buffers are not feasible, the city manager or designee may require the applicant to undertake alternative on-site or off-site mitigation measures, including but not limited to a financial contribution to projects or programs which seek to improve environmental quality within the same watershed.

(3) Pursuant to RCW 35.21.180, the King County, Washington "Surface Water Design Manual," including all subsequent revisions, is adopted by reference as the "Surface Water Design Manual for the City of Des Moines" in DMMC 18.86.330.

(4) Building Setback Lines. A building setback line of 10 feet is required from the edge of any stream buffer. Minor structural intrusions into the area of the building setback line may be allowed if the city manager or designee determines that such intrusions will not negatively impact the critical area. [Ord. 1400 § 24, 2007.]

18.86.150 Streams – Reasonable use exceptions.

(1) Adjustments to Dimensional Requirements.

(a) Yard Reductions for Building One Single-Family Dwelling. The city manager or designee may allow modification to the required front, rear, or side yard on the opposite of the stream. The reductions must meet the following standards:

(i) The stream, stream buffer and required yard area opposite the stream equals more than 50 percent of the property dimension of the development site.

(ii) A required side yard is reduced to five feet.

(iii) A required front or rear yard is reduced to 10 feet.

(2) Single-Family Dwelling. Development of one single-family dwelling within the buffer of a stream on a development site shall be approved by the city manager or designee if the applicant demonstrates that:

(a) The extent of development within the buffer is limited to that which is necessary to create a developable area which is no larger than 4,000 square feet;

(b) The proposal utilizes to the maximum extent possible the best available construction, design, and development techniques which result in the least adverse impact on the environmentally critical area;

(c) The proposal incorporates the development standards of DMMC 18.86.140 and the surface water design manual to the maximum extent possible; and

(d) The proposal is consistent with the purpose and intent of this chapter. [Ord. 1400 § 25, 2007.]

18.86.160 Streams – Limited exemptions.

The city manager or designee may allow exemptions from the provisions of this chapter based on the following provisions:

(1) Stream Crossings. Stream crossings, whether for access or utility purposes, shall be avoided to the extent possible. The city manager or designee may approve stream crossings only when he/she determines that there are no practicable or reasonable alternatives, and when the proposal complies with all of the following criteria:

(a) Bridges are required for streams which support salmonids; and

(b) All crossings using culverts shall use superspan or oversize culverts; and

(c) All construction and installation crossings shall comply with timing restrictions set by federal and state permit processes, generally during summer low flow; and

(d) Crossings shall not occur in salmonid spawning areas unless no other feasible crossing site exists; and

(e) Bridge piers or abutments shall not be placed in either the floodway or between the ordinary high water marks unless no other feasible alternative placement exists; and

(f) Crossings shall not diminish flood-carrying capacity; and

(g) Crossings shall provide for maintenance of culverts, bridges, and utilities; and

(h) Crossings shall serve multiple properties whenever possible; and

(i) Crossings shall comply with all applicable local, state, and federal laws.

(2) Stream Relocation and Dredging. Stream relocation and dredging are strongly discouraged and shall only occur to improve hydrologic, hydraulic, and fish and wildlife habitat functions. The city manager or designee may approve stream relocation and dredging only when he/she determines that there are no practicable or reasonable alternatives, and when the proposal complies with all of the following criteria:

(a) Relocation and dredging shall follow all applicable local, state, and federal laws and receive approvals from the agencies administering such laws;

(b) Dredging of any stream shall follow the standards for dredging set forth in the shoreline master program;

(c) A mitigation plan with a contingency plan shall be prepared by a licensed professional pursuant to DMMC 18.86.170 and shall include the following provisions:

(i) Identification of long-term goals (25 years) and objectives for restoration of the stream channel and riparian areas;

(ii) A three-year to five-year monitoring program to measure success of the restoration;

(iii) Mitigation shall be designed to accommodate a 100-year storm event.

(3) Stream Channel, Stream Bank, Bluff, or Shore Stabilization. The city manager or designee may approve stabilization of stream channels, stream banks, bluffs, or shorelines when he/she determines that the proposed stabilization complies with the Washington Department of Fish and Wildlife Integrated Streambank Protection Guidelines (2003) and the following criteria as applicable:

(a) Naturally occurring movement threatens existing structures, public improvements, unique natural resources, or the only feasible access to property.

(b) In the case of streams, stabilization results in improved fish and wildlife habitat, flood control, and improved water quality.

(c) The preferred methodology for stream channel and bank stabilization is bioengineering or some combination of bioengineering and more traditional structural solutions. Bioengineering involves use of plant materials to stabilize eroding stream channels and banks.

(d) The preferred methodology for bluff and shore stabilization is naturalistic shoreline protection measures such as creation of beaches that absorb and dissipate wave energy. Bluff and shore stabilization shall follow the standards of the shoreline master program for the construction of any stabilization device.

(e) Relocation and dredging shall follow all applicable local, state, and federal laws and receive approvals from the agencies administering such laws. [Ord. 1400 § 26, 2007.]

18.86.170 Streams – Mitigation requirements.

(1) Compensatory mitigation for alterations to streams shall achieve equivalent or greater biologic functions.

(a) On-Site and In-Kind for Streams. For streams, the applicant shall maintain or improve stream channel dimensions, including depth, length, and gradient; restore or improve native vegetation and fish and wildlife habitat; and create an equivalent or improved channel bed, biofiltration, and meandering. Unless otherwise specified by the city manager or designee, such mitigation to replace and enhance stream elements such as pools, riffles, and spawning gravel shall be provided on a relative 2:1 basis.

(b) Off-Site and In-Kind for Streams. When environmental information demonstrates that greater functions and values will be achieved, off-site compensation of greater size, functions, and values may be approved if the compensation project is within the same subwatershed as the wetland or stream to be altered. Unless otherwise specified by the city manager or designee, such mitigation shall be provided pursuant to the ratios specified in this section.

(c) Conditions Preceding Stream Alteration. In the case of the exceptions of DMMC 18.86.140, the following conditions shall precede any stream alteration approved pursuant to this section:

(i) A mitigation plan for the compensation project shall be submitted by the applicant and approved by the city manager or designee;

(ii) The compensation project shall be fully implemented following the requirements of the approved mitigation plan; and

(iii) A final report shall be submitted following the specified growing seasons documenting that all requirements of a mitigation plan have been fully achieved. The city may postpone or limit development, require bonds pursuant to DMMC 18.86.310, or use other appropriate techniques to ensure the success of the mitigation plan.

(d) The city manager or designee may postpone the issuance of development permits for one or more growing seasons until the success or viability of the approved mitigation measures can be demonstrated by the applicant.

(e) Substitute Fees. In cases where the applicant demonstrates to the satisfaction of the city manager or designee that a suitable

compensation site does not exist, the city manager or designee may allow the applicant to make a financial contribution to a water quality project or program performing critical areas enhancement, restoration, or mitigation. The project or program must improve environmental quality within the same watershed as the altered stream. The amount of the fee shall be determined by the city manager or designee and shall be equal to the cost of mitigating the impact of the stream alteration.

(2) Mitigation Plans. All restoration and compensation projects shall follow a mitigation plan prepared by qualified scientists containing the following components:

(a) Baseline Information. Quantitative data shall be collected and synthesized for both the impacted critical area and the proposed mitigation site, if different from the impacted critical area, following procedures set forth by the city manager or designee.

(b) Environmental Goals and Objectives. Goals and objectives describing the purposes of the mitigation measures shall be provided, including a description of site selection criteria, identification of target evaluation species and resource functions.

(c) Performance Standards. Specific criteria for fulfilling environmental goals and objectives, and for beginning remedial action or contingency measures shall be provided, including water quality standards, species richness and diversity targets, habitat diversity indices, or other ecological, geological, or hydrological criteria.

(d) Detailed Construction Plan. Written specifications and descriptions of mitigation techniques shall be provided, including the proposed construction sequence, accompanied by detailed site diagrams and blueprints that are an integral requirement of any development proposal.

(e) Monitoring Program. A program outlining the approach for assessing a completed project shall be provided, including descriptions of proposed experimental and control site survey or sampling techniques. A protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the mitigation project. A report shall be submitted at least twice yearly documenting milestones, successes, problems, and contingency actions of the restoration or compensation project. The city manager or designee shall require that the applicant monitor the compensation or restoration project for a minimum of five years.

(f) Contingency Plan. A plan shall be provided fully identifying potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.

(g) Performance and Maintenance Securities. Securities ensuring fulfillment of the mitigation project, monitoring program, and any contingency measures shall be posted pursuant to DMMC 18.86.310.

(3) Final Approval. The city manager or designee shall grant final approval of a completed restoration or compensation project if the final report of the project mitigation plan satisfactorily documents that the area has achieved all requirements of DMMC 18.86.280. [Ord. 1400 § 27, 2007.]

18.86.180 Geologically hazardous areas – Development standards.

Development within all geologically hazardous areas shall comply with the following general performance requirements:

(1) Alterations of geologically hazardous areas or associated buffers may only occur for activities that:

(a) Will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;

(b) Will not adversely impact other critical areas;

(c) Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions;

(d) Are designed and constructed in accordance with the surface water design manual; and

(e) Are certified as safe as designed and under anticipated conditions by a qualified engineer or geologist, licensed in the state of Washington.

(2) Critical Facilities Prohibited. Critical facilities shall not be sited within geologically hazardous areas unless there is no other practical alternative. [Ord. 1400 § 28, 2007.]

18.86.190 Ravine sidewalls and bluffs – Development standards.

Activities on ravine sidewalls and bluffs shall meet the general performance requirements of DMMC 18.86.180 and the specific following requirements:

(1) Buffers. A 50-foot undisturbed buffer of native vegetation shall be established from the top, toe, and sides of all ravine sidewalls and bluffs.

(2) Buffer Reduction. The city manager or designee may approve a reduction in the width of the required buffer, to a minimum width of 10 feet, when special environmental studies are provided that demonstrate all of the following:

(a) A licensed engineer specializing in geotechnical analysis or a licensed engineering geologist, after review of the geologic conditions of the site, the proposed development plans, and all mitigation measures proposed or required, concludes in a written statement that the development proposal will result in minimal risk of soil instability; and

(b) Special mitigation measures regarding design, construction, and maintenance can reasonably be employed to minimize adverse environmental impacts associated with the proposal; and

(c) The proposal represents minimal disruption of existing native vegetation.

(3) Additional Buffers. The city manager or designee may require increased buffers if environmental studies indicate such increases are necessary to mitigate landslide, seismic and erosion hazards, or as otherwise necessary to protect the public health, safety, and welfare.

(4) Building Setback Lines. A building setback line of 10 feet is required from the edge of any buffer of a ravine sidewall or bluff. Minor structural intrusions into the area of the building setback line may be allowed if the city manager or designee determines that such intrusions will not negatively impact the critical area.

(5) All buffers shall be measured from the top, toe, and sides of all ravine sidewalls or bluffs. [Ord. 1400 § 29, 2007.]

18.86.200 Hillsides of 15 percent slope and greater – Development standards – Disturbance limitations.

Development on hillsides shall comply with the general performance requirements of DMMC 18.86.180 and the following requirements regarding disturbance limitations, development location, development design, construction techniques, and landscaping.

(1) Amount of Disturbance Allowed. The following chart sets forth the maximum slope disturbance allowed on a development site:

Slope	Amount of Slope Which Can Be Disturbed	Factor
0 – 15%	100%	1.00
15 – 25%	60%	.60
25 – 40%	45%	.45
40%+	30%	.30

The overall amount of disturbance allowed on development sites which have any combination of the above slope categories shall be determined by the following formula:

(Square Footage of Site having 0 – 15% slopes) X 1.00 + (Square Footage of Site having 15 – 25% slopes) X 0.60 + (Square Footage of Site having 25 – 40% slopes) X 0.45 + (Square Footage of Site having 40%+ slopes) X 0.30 = Total Amount of Allowable Site Disturbance.

(2) Development Location.

(a) Structures and improvements shall be clustered to retain as much open space as possible and the natural topographic character of the slope; and

(b) Structures and improvements shall conform to the natural contour of the slope, foundations must be tiered to generally conform to the existing topography of the site; and

(c) Structures and improvements shall be located to preserve the most sensitive portion of the site and its natural landforms and vegetation.

(3) Development Design.

(a) The footprint of buildings and other disturbed areas shall be minimized. The least number of buildings is desirable in order to consolidate the development; and

(b) Standard prepared building pads (slab on grade) resulting in grading more than 10 feet outside the building footprint area are prohibited; and

(c) Use of common access drives and utility corridors is required where feasible; and

(d) Impervious lot coverage shall be minimized. With the exception of detached single-family structures, understructure parking and multilevel structures shall be incorporated where feasible; and

(e) Roads, walkways, and parking areas shall be designed to parallel the natural contours of the steep slope hazard areas while maintaining consolidated areas of natural topography and vegetation. Access shall be located in the least environmentally critical area feasible; and

(f) Use of retaining walls which allow the maintenance of existing natural slope areas is preferred over graded artificial slopes.

(4) Construction Techniques.

(a) Use of foundation walls as retaining walls is preferable to rock or concrete walls built separately and away from the building. Freestanding retaining devices are only permitted when they cannot be designed as structural elements of the building foundation; and

(b) Use of pole-type construction which conforms to the existing topography is desirable where feasible; and

(c) Structures shall be tiered to conform to existing topography and to minimize topographic modification. Piled deck support structures are preferred for parking or garages over fill-based construction types.

(5) Landscaping. The disturbed area of a development site not used for buildings and other improvements shall be landscaped according to a landscape design which will achieve a minimum 40 percent coverage by the canopy of trees and shrubs within 10 years to provide habitat desirable to native western Washington birds. The trees and shrubs shall be a mix of shade, flowering, and coniferous and broad-leaf evergreens that are either native to the Puget Sound region or are valuable to western Washington birds. The Department of Wildlife "Plants for Wildlife in Western Washington" shall be used as a general guide.

(a) Trees shall be the following size at time of planting and shall conform to the "American Standard for Nursery Stock":

(i) Single-stem shade and flowering trees shall be a minimum one-inch caliper trunk as measured six inches above the ground.

(ii) Multistem shade and flowering trees shall be a minimum height of eight feet as measured from the ground level to the average uppermost point of growth of the plant.

(iii) Coniferous evergreen trees (Types 4, 5, and 6) shall be a minimum height of six feet as measured from the ground to the midpoint between the uppermost whorl and the tip of the leader. For species of trees without whorls, minimum height shall be measured to the uppermost side growth. The ratio of height to spread shall not be less than 5:3.

(iv) Broad-leaf evergreen trees (Types 4 and 5) shall be a minimum height of four feet as measured from the ground level to where the main part of the plant ends, not to the tip of a thin shoot.

(b) Shrubs shall be of the following size at time of planting and shall conform to the "American Standard for Nursery Stock":

(i) Dwarf and semi-dwarf deciduous shrubs shall be a minimum height of two to two and one-half feet above grade, and either a No. 3 container size for container-grown plants, 10-inch diameter root ball for balled and burlapped plants, or 11-inch root spread for bare-root plants.

(ii) Strong-growing deciduous shrubs shall be a minimum height of two to three feet above grade, and either a No. 3 container size for container-grown plants, 10-inch diameter root ball for balled and burlapped plants, or 11-inch root spread for bare-root plants.

(iii) Coniferous and broad-leaf evergreen shrubs (Types 1, 2, and 3) shall be a minimum height of two to two and one-half feet spread or height, and either a minimum No. 3 container size for container-grown plants or 12-inch diameter root ball for balled and burlapped plants. [Ord. 1400 § 30, 2007.]

18.86.210 Ravine sidewalls, bluffs, and hillsides of 15 percent slope and greater – Reasonable use exceptions.

(1) Limited Waiver of Hillside Disturbance Limitations. Any one or all of the disturbance limitation requirements of DMMC 18.86.200 may be waived if the city manager or designee determines that the application of such requirements is not feasible for developing one single-family dwelling on a development site and the proposal is consistent with the purpose and intent of this chapter. [Ord. 1400 § 31, 2007.]

18.86.220 Seismic hazard areas – Development standards.

Development in seismic hazard areas shall be in accordance with the standards for earthquake design and seismic motion as established in the Des Moines Building and Construction Code (Title 14 DMMC). Seismic hazard areas shall be altered only when the city manager or designee concludes, based on environmental information, the following:

(1) There is no actual hazard based on a lack of seismic activity in the past in the area of the development proposal, and a quantitative analysis of potential for seismic activity indicates no significant risk to the development proposal; or

(2) The development proposal can be designed so that it will be as safe from any earthquake damage as a similar development not located in a seismic hazard area. [Ord. 1400 § 32, 2007.]

18.86.230 Erosion and landslide hazard areas – Development standards.

Development on hillsides containing or adjacent to erosion or landslide hazard areas shall meet the general performance requirements of DMMC 18.86.180 and the following:

(1) Buffer Requirement. A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the city manager or designee to eliminate or minimize the risk of property damage, death, or injury resulting from landslides caused in whole or part by the development, based upon review of and concurrence with a special environmental study prepared by a qualified professional.

(a) Minimum Buffer. The minimum buffer shall be equal to the height of the slope or 50 feet, whichever is greater;

(b) Increased Buffer. The buffer may be increased where the city manager or designee determines a larger buffer is necessary to prevent risk of damage to proposed and existing development;

(c) Buffer Reduction. The buffer may be reduced to a minimum of 10 feet when a qualified professional demonstrates to the city manager or designee's satisfaction that the reduction will adequately protect the proposed development, adjacent developments, and uses and the subject critical area;

(2) Alterations. Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and certifies that:

(a) The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;

(b) The development will not decrease slope stability on adjacent properties; and

(c) Such alterations will not adversely impact other critical areas;

(3) Design Standards. Development within an erosion or landslide hazard area and/or buffer shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this chapter. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their

level of function. The basic development design standards are:

(a) The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the Uniform Building Code;

(b) Structures and improvements shall be clustered to avoid geologically hazardous areas and other critical areas;

(c) Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;

(d) Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;

(e) The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;

(f) The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes; and

(g) Development shall be designed to minimize impervious lot coverage;

(4) Vegetation Retention. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited;

(5) Seasonal Restriction. Land clearing, grading, or filling shall be limited to the period between April 1st and October 1st; provided, that the city may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions;

(6) Utility Lines and Pipes. Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The line or pipe shall be located aboveground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Storm water conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior;

(7) Point Discharges. Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:

(a) Conveyed via continuous storm pipe downslope to a point where there are no erosion hazard areas downstream from the discharge;

(b) Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed storm water runoff in the predeveloped state; or

(c) Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and storm water runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope;

(8) Subdivisions. The division of land in landslide hazard areas and associated buffers is subject to the following:

(a) Land that is located wholly within a landslide hazard area or its buffer may not be subdivided. Land that is located partially within a landslide hazard area or its buffer may be divided; provided, that each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard [area] or its buffer.

(b) Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the city determines that no other feasible alternative exists; and

(9) Prohibited Development. On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers. [Ord. 1400 § 33, 2007.]

18.86.240 Critical aquifer recharge areas – Development standards – Buffers and disturbance limitations.

If an aquifer recharge area is located on or adjacent to a development site, all activities on the site shall be in compliance with the following requirements:

(1) Development Standards – General Performance Requirements.

(a) Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.

(b) The proposed activity must comply with the water source protection requirements and recommendations of the U.S. Environmental Protection Agency, Washington State Department of Health, and the Seattle-King County Health Department.

(c) The proposed activity must be designed and constructed in accordance with the surface water design manual.

(2) Development Standards – Specific Uses.

(a) Storage Tanks. All storage tanks proposed to be located in a critical aquifer recharge area must comply with local building code requirements and must conform to the following requirements:

(i) Underground Tanks. All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

(A) Prevent releases due to corrosion or structural failure for the operational life of the tank;

(B) Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and

(C) Use material in the construction or lining of the tank that is compatible with the substance to be stored.

(ii) Aboveground Tanks. All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

(A) Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;

(B) Have a primary containment area enclosing or underlying the tank or part thereof; and

(C) Provide either a secondary containment system built into the tank structure or a secondary containment dike system built outside the tank for all tanks.

(b) Vehicle Repair and Servicing.

(i) Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

(ii) No dry wells shall be allowed in critical aquifer recharge areas on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the state Department of Ecology prior to commencement of the proposed activity.

(c) Residential Use of Pesticides and Nutrients. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.

(d) Use of Reclaimed Water for Surface Percolation or Direct Recharge. Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the state Departments of Ecology and Health.

(i) Use of reclaimed water for surface percolation must meet the ground water recharge criteria given in RCW 90.46.010(10) and 90.46.080(1). The state Department of Ecology may establish additional discharge limits in accordance with RCW 90.46.080(2).

(ii) Direct injection must be in accordance with the standards developed by authority of RCW 90.46.042.

(e) State and Federal Regulations. The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

Activity	Statute – Regulation – Guidance
Aboveground Storage Tanks	WAC 173-303-640
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (Washington Department of Ecology WQ-R-95-56)
Below Ground Storage Tanks	Chapter 173-360 WAC
Chemical Treatment Storage and Disposal Facilities	WAC 173-303-182
Hazardous Waste Generator (Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, Etc.)	Chapter 173-303 WAC
Injection Wells	Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC
On-Site Sewage Systems (Large Scale)	Chapter 173-240 WAC
On-Site Sewage Systems (Less Than 14,500 Gal./Day)	Chapter 246-272 WAC, Local Health Ordinances
Pesticide Storage and Use	Chapter 15.54 RCW, Chapter 17.21 RCW
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC
Wastewater Application to Land Surface	Chapter 173-216 WAC, Chapter 173-200 WAC, Washington State Department of Ecology Land Application Guidelines, Best Management Practices for Irrigated Agriculture

(3) Prohibited Uses and Activities – Critical Aquifer Recharge Areas. The following activities and uses are prohibited in critical aquifer recharge areas:

(a) Landfills. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste landfills;

(b) Underground Injection Wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells;

(c) Mining.

(i) Metals and hard rock mining; and

(ii) Sand and gravel mining, prohibited from critical aquifer recharge areas determined to be highly susceptible or vulnerable;

(d) Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

(e) Storage, Processing, or Disposal of Radioactive Substances. Facilities that store,

process, or dispose of radioactive substances; and

(f) Other Prohibited Uses or Activities.

(i) Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;

(ii) Activities that would significantly reduce the recharge to aquifers that are a source of significant base flow to a regulated stream; and

(iii) Activities that are not connected to an available sanitary sewer system, are prohibited from critical aquifer recharge areas associated with sole source aquifers. [Ord. 1400 § 34, 2007.]

18.86.250 Fish and wildlife habitat conservation areas – Development standards – Buffers and disturbance limitations.

(1) Buffers and Disturbance Limitations. If a fish and/or wildlife habitat conservation area is located on or adjacent to a development site, the following provisions shall apply:

(a) A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat.

(b) The city manager or designee may require native vegetation buffer areas when special environmental studies indicate the necessity for such buffers in order to achieve the purposes identified in DMMC 18.86.030.

(c) In cases where the city manager or designee determines that adequate buffers are not feasible, and that the impact upon the habitat conservation area may be severe, the city manager or designee may prohibit development of the subject habitat conservation and buffer area.

(d) In cases where the city manager or designee determines that adequate buffers are not feasible, but that the environmental impacts associated with the proposal would not be so severe as to warrant a prohibition of all development, the applicant shall undertake alternative on-site or off-site mitigation measures specified by the city manager or designee. Alternative mitigation measures include, but are not limited to, a financial contribution to projects or programs which seek to improve environmental quality within the same fish and wildlife habitat conservation area. Such financial contribution shall be of an amount sufficient to fund mitigation measures commensurate with the adverse impact being mitigated.

(e) Any approval of alterations or impacts to a habitat conservation area shall be supported by the best available science such as the Washington Department of Fish and Wildlife management recommendations for priority habitats and species.

(f) When appropriate due to the type of habitat or species present or the project area conditions, the city manager or designee may require a critical areas study. If the habitat conservation area is also classified as a stream, lake, pond or a wetland, then the stream, lake, pond or wetland protection standards shall apply and habitat management shall be addressed as part of the stream, lake, pond or wetland review; provided, that the city may impose additional requirements when necessary to provide for protection of the habitat conservation areas consistent with this chapter. The city manager or designee may require the following site and proposal related information with the critical areas study:

(i) Identification of any federal or state listed endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area, and an assessment of potential project impacts to the species;

(ii) A discussion of any federal or state management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;

(iii) A discussion of any ongoing management practices that will protect habitat after the project site has been developed, including any proposed monitoring, maintenance, and adaptive management programs; and

(iv) When appropriate due to the type of habitat or species present or the project area conditions, the city manager or designee may also require the habitat management plan to include an evaluation by the state Department of Fish and Wildlife, local Native American Indian tribe, or other qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate.

(2) Specific Habitats. If a use, activity or development is within, adjacent to, or likely to affect one or more specific fish and/or wildlife habitat conservation areas, the following provisions shall apply:

(a) Endangered, Threatened, and Sensitive Species.

(i) No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by the Washington Department of Fish and Wildlife or applicable state or federal agency.

(ii) Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a special environmental study prepared by a qualified professional and approved by the city. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.

(iii) Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292).

(b) Anadromous Fish.

(i) All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

(A) Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;

(B) An alternative alignment or location for the activity is not feasible;

(C) The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas;

(D) Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques, according to an approved special environmental study; and

(E) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved special environmental study.

(ii) Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided to prevent fish migrating downstream from being trapped or harmed.

(iii) Filling of aquatic habitats, when authorized by the City of Des Moines Shoreline Master Program shall not adversely impact anadromous fish or habitat or shall mitigate any unavoidable impacts and shall only be allowed for a water-dependent use. [Ord. 1400 § 35, 2007.]

18.86.260 Area of special flood hazard – Development standards – Buffers and disturbance limitations.

If an area of special flood hazard is located on or adjacent to a development site, all activities on the site shall be in compliance with the following requirements and restrictions:

(1) The provisions of chapters 11.08 and 14.44 DMMC.

(2) Prior to approval of any development proposal within an area of special flood hazard, special environmental studies must dem-

onstrate that the proposed development and related construction activities will not result in an increase in the frequency, severity, or magnitude of flooding on the development site or on properties within the same hydrologic system. [Ord. 1400 § 36, 2007.]

18.86.270 Limited density transfer.

(1) Density and Floor Area Calculation. The calculation of potential dwelling units in residential development proposals and allowable floor area in commercial development proposals shall be determined by the ratio of developable area to undevelopable critical area of the development site. The following formula for density and floor area calculations is designed to provide compensation for the preservation of critical areas, flexibility in design, and consistent treatment of different types of development proposals. The formula shall apply to all residential zones (including PUD) and all commercial zones.

(2) Formulas. The maximum number of dwelling units (DU) for a site which contains undevelopable critical areas is equal to:

> [(Developable Area) divided by (Minimum Lot Area/DU)] + [(Undevelopable Area) divided by (Minimum Lot Area/DU) (Development Factor)] = Maximum Number of Dwelling Units.

The maximum amount of commercial floor area for a site which contains undevelopable critical areas is equal to:

> [(Maximum Permitted Floor Area/Lot Area) (Developable Area)] + [(Maximum Permitted Floor Area/Lot Area) (Undevelopable Area) (Development Factor)] = Maximum Amount of Floor Area.

Developable critical areas shall receive full credit towards calculating the number of dwelling units or floor area.

(3) Development Factor. The development factor is a number to be used in calculating the number of dwelling units or the maximum allowable floor area for a site which contains undevelopable critical areas. The development factor is derived from the following table:

Undevelopable Environmentally Critical Area as Percentage of Site (Percent)	Development Factor
1 – 10	.30
11 – 20	.27
21 – 30	.24
31 – 40	.21
41 – 50	.18
51 – 60	.15
61 – 70	.12
71 – 80	.09
81 – 90	.06
91 – 99	.03

[Ord. 1400 § 37, 2007.]

18.86.280 Development exceptions.

Exceptions to the development restrictions and standards set forth in DMMC 18.86.080 through 18.86.260 shall be permitted pursuant to the following provisions:

(1) Emergencies. The city manager or designee may approve improvements that are necessary to respond to emergencies that threaten the public health and safety, or public development proposals when he/she determines that no reasonable alternative exists and the benefit outweighs the loss. Emergencies shall be verified by a licensed engineer.

(2) Drainage Facilities.

(a) Wetlands, streams and their buffers shall not be altered for use as any private drainage facility. Drainage facilities near these areas shall satisfy all requirements of the surface water design manual.

(b) Wetlands, streams and their buffers may be altered for use as a public drainage facility; provided, that all requirements of the surface water design manual and all other local, state, and federal laws are satisfied, and so long as increased and multiple natural resource functions are achievable and the benefits outweigh the lost resource. The city man-

ager or designee may approve drainage facilities in a wetland or stream only where he/she determines that long-term impacts are minimal or where there are no practicable or reasonable alternatives and mitigation is provided.

(c) Ravine sidewalls and bluffs and their buffers shall not be altered for use as any private facility, but may be altered for a public facility if all requirements of the surface water design manual are satisfied. Drainage facilities on hillsides shall satisfy all requirements of the surface water design manual.

(3) Trails and Trail-Related Facilities. Public and private trails and trail-related facilities, such as picnic tables, benches, interpretive centers and signs, viewing platforms, and campsites, shall be allowed, but use of impervious surface shall be minimized. Trails and trail-related facilities shall be avoided within wetlands and streams. The city manager or designee may approve such trails and facilities only when he/she determines that there are no practicable or reasonable upland alternatives. Trail planning, construction, and maintenance shall adhere to the following additional criteria:

(a) Trails and related facilities shall, to the extent feasible, be placed on existing levees, road grades, utility corridors, or any other previously disturbed areas; and

(b) Trails and related facilities shall be planned to minimize removal of trees, shrubs, snags, and important wildlife habitat; and

(c) Trail construction and maintenance shall follow the U.S. Forest Service "Trails Management Handbook" (FSH 2309.18, June 1987) and "Standard Specifications for Construction of Trails" (EM-7720-102, June 1984) or as amended; and

(d) Viewing platforms, interpretive centers, campsites, picnic areas, benches, and access to them shall be designed and located to minimize disturbance; and

(e) Trails and related facilities shall provide water quality protection measures to assure that runoff from them does not directly discharge to wetlands or streams; and

(f) Within the buffer, trails and trail-related facilities shall be aligned and constructed to minimize disturbance to wetland and stream functions and values.

(4) Utility and Roadway Construction. Construction of utilities and roadways shall be avoided within critical areas. The city manager or designee may approve utilities and/or roadways in critical areas and their buffers only when he/she determines that there are not practicable or reasonable alternatives. Utility and roadway corridor alignment, construction, restoration, and maintenance shall adhere to the following additional criteria:

(a) Corridor alignment shall follow a path of least impact to the functions of critical areas;

(b) Corridor construction and maintenance shall maintain and protect the hydrologic and hydraulic functions of wetlands and streams and the stability of ravine sidewalls and bluffs;

(c) Corridors shall be fully revegetated with native vegetation upon completion of construction pursuant to the development standards set forth in DMMC 18.86.080 through 18.86.260 pursuant to the development standards set forth in DMMC 18.86.080 through 18.86.260;

(d) Any pipeline crossing of a stream channel shall employ one or more of the following measures:

(i) Jacked or bored under active stream channel starting outside the ordinary high water mark;

(ii) Suspension over the active channel; or

(iii) Restoration of functions and values of natural stream channel features where channel disturbance is unavoidable;

(e) Any required construction or maintenance roads shall be the minimum width necessary to gain access. Roads shall be maintained without use of herbicides and, when specified by the city manager or designee, shall be available for use as a trail. Roads necessary for construction or maintenance purposes shall closely approximate the location of the utility and/or primary roadway to minimize disturbance; and

(f) Within a required buffer area, utilities and roadways shall be aligned and con-

structed to minimize disturbance to critical area functions and values.

(5) Time Limitation. A development exception automatically expires and is void if the applicant fails to file for a building permit or other necessary development permit within one year of the effective date of the development exception, unless either:

(a) The applicant has received an extension for the development exception pursuant to this section; or

(b) The development exception approval provides for a greater time period.

(6) Time Extension. The city manager or designee may extend a development extension, not to exceed one year, if:

(a) Unforeseen circumstances or conditions necessitate the extension of the development exception; and

(b) Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and

(c) The extension of the development exception will not cause adverse impacts to critical areas. [Ord. 1400 § 38, 2007.]

18.86.290 Unauthorized critical area alterations and enforcement.

(1) When a critical area or its buffer has been altered in violation of this chapter, all ongoing development work shall stop and the critical area shall be restored. The city manager or designee shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this chapter. All restoration shall follow an approved restoration plan pursuant to the provisions of this chapter and meet the following minimum performance standards:

(2) Minimum Performance Standards for Restoration.

(a) For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

(i) The historic structural and functional values shall be restored, including water quality and habitat functions;

(ii) The historic soil types and configuration shall be replicated;

(iii) The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration; and

(iv) Information demonstrating compliance with the requirements of this chapter shall be submitted to the city manager or designee.

(b) For alterations to flood and geological hazards, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

(i) The hazard shall be reduced to a level equal to, or less than, the predevelopment hazard;

(ii) Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and

(iii) The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

(3) Site Investigations. The city manager or designee is authorized to make site inspections and take such actions as are necessary to enforce this chapter. The city manager or designee shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

(4) Penalties. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be subject to enforcement by civil penalty pursuant to DMMC 18.72.060. [Ord. 1400 § 39, 2007.]

18.86.300 Tracts and easements.

(1) Environmentally Critical Area Tracts or Easements. Separate environmentally critical area tracts or easements shall be used to protect critical areas that are to remain undeveloped pursuant to this chapter. The tracts or easements shall impose upon all present and future owners and occupiers of land subject to the tracts or easements the obligation, enforceable on behalf of the public by the city, to leave the areas of the tracts or easements permanently undisturbed. In a single-family residential zone, any lots containing a critical area easement shall be of a dimension of not less than 5,000 square feet, exclusive of such easement.

(2) Permanent Marking. Where determined by the city manager or designee to reduce the likelihood of future intrusion into a critical area, the common boundary between a separate environmentally critical area tract or easement and the adjacent land shall be permanently identified and marked with permanent wood or metal signs on wood or metal posts. Sign location and wording shall be approved by the city manager or designee during review of the development proposal and are exempt from the sign code, chapter 18.42 DMMC. The size, coloring, lettering, spacing, placement, and height above the ground surface shall be as established by the city manager or designee. [Ord. 1400 § 40, 2007.]

18.86.310 Securities and enforcement.

(1) Performance Securities. The city manager or designee shall require the applicant of a development proposal to post a cash performance bond or other acceptable security to guarantee that the applicant will properly construct all structures and improvements required by this chapter. The security shall guarantee that the work and materials used in construction are free from defects. All securities shall be on a form approved by the director. Until written release of the security, the principal or surety may not be terminated or canceled. The director shall release the security upon determining that all structures and improvements have been satisfactorily constructed and upon the posting by the applicant of a maintenance security if one is required.

(2) Maintenance Securities. The director shall require the applicant to post a cash maintenance bond or other acceptable security guaranteeing that structures and improvements required by this chapter satisfactorily perform for a minimum of two years, or, in the case of required mitigation improvements, up to five years after they have been constructed and approved. All securities shall be on a form approved by the city manager or designee. Until written release of the security, the principal or surety may not be terminated or canceled. The director shall release the security upon determining that performance standards established for evaluating the effectiveness and success of the structures and improvements have been satisfactorily met. The performance standards shall be agreed upon by the city manager or designee and the applicant and contained in the mitigation plan developed and approved during the review process.

(3) Renewable Bonds. Any bonds required by this section may be in the form of one-year bonds to be renewed as appropriate.

(4) Enforcement. Violations of this chapter shall be subject to the enforcement provisions of chapter 18.72 DMMC. [Ord. 1400 § 41, 2007.]

18.86.320 Environmentally critical area mitigation fund.

The city manager shall be authorized to establish an environmentally critical area mitigation fund solely for use in enforcing and implementing environmentally critical area codes. Upon establishment of the fund, all moneys obtained from enforcement of the provisions of this chapter shall be deposited in this fund. [Ord. 1400 § 42, 2007.]

18.86.330 Surface water design manual.

Pursuant to RCW 35.21.180 the King County, Washington "Surface Water Design Manual," including all subsequent revisions, is adopted by reference as the "Surface Water Design Manual for the City of Des Moines." A current copy of the King County, Washington "Surface Water Design Manual" adopted by

reference in this section shall be maintained on file in the office of the city manager or designee and shall be available for public inspection. [Ord. 1400 § 43, 2007.]

18.86.340 Surface water contamination – Determination.

(1) The city shall determine if surface water pollution has occurred or is occurring by:

(a) Utilizing the federal Environmental Protection Agency quality criteria for freshwater bodies and the state Department of Ecology water quality standards for surface waters of the state listed in chapter 173-201A WAC; or

(b) Requesting investigations by other agencies having regulatory authority regarding surface water pollution.

(2) When the city or the investigating agency determines surface water quality pollution has occurred, notice shall be provided to the alleged source of pollutants identifying the specific surface water quality problem and requesting that the problem be remedied.

(3) The city shall pursue city, state and/or federal enforcement actions when any surface water pollution is verified. [Ord. 1400 § 44, 2007.]

18.86.350 Surface water contamination – Compliance required – Penalty.

(1) No person shall defile, pollute, or contaminate:

(a) The surface waters of the city;

(b) A stream running through or into the corporate limits of the city; or

(c) A stream running through or into the corporate limits of the city, and for a distance of five miles beyond the corporate limits of the city.

(2) A violation of or failure to comply with this section is a class 1 civil infraction.

(3) Each day upon which a violation occurs constitutes a separate violation. [Ord. 1400 § 45, 2007.]

18.86.360 Surface water contamination – Penalty not exclusive remedy.

The city reserves the right to pursue other appropriate civil actions under state and federal law, including a citizen suit under the federal Clean Water Act. [Ord. 1400 § 46, 2007.]

18.86.370 Interpretation.

This chapter shall be liberally construed to give full effect to its objectives and purposes. [Ord. 1400 § 47, 2007.]

18.86.380 Appeals.

Any decision of the city manager or designee in the administration of this chapter may be appealed to the hearing examiner. Such appeal must be taken within 10 days of the final decision of the city manager or designee. Unless the jurisdiction of the hearing examiner is invoked in strict compliance with the time requirements of this section, the decision of the city manager or designee shall be final and binding and shall not be subject to further agency or judicial review. Appeals taken pursuant to this chapter shall be consolidated with all other pending agency administrative reviews. The hearing examiner shall give substantial weight to any discretionary decision of the city manager or designee rendered pursuant to this chapter. [Ord. 1400 § 48, 2007.]

Chapter 18.88

PLANNING COMMISSION AS BOARD OF ADJUSTMENT[1]

(Repealed by Ord. 430)

Chapter 18.90

SHORELINE MASTER PROGRAM

Sections
18.90.010 Adopted.

18.90.010 Adopted.

The document kept on file and available from the city clerk entitled "City of Des Moines Shoreline Master Program" attached as Exhibit "A" to the ordinance codified in this chapter, dated January 27, 2011, and consisting of 133 pages, and Appendix "A" entitled "Shoreline Inventory and Characterization Report," dated March 2005, are adopted as the official shoreline master program for the city. [Ord. 1502 § 1, 2011: Ord. 1440 § 3, 2008: Ord. 715 § 1, 1987.]

1. Prior legislation: Ord. 263.

Chapter 18.92

BOARD OF ADJUSTMENT[1]

(Repealed by Ord. 770)

Chapter 18.94

HEARING EXAMINER

Sections

1. Prior legislation: Ords. 226, 412, and 430.

18.94.010 Title – Purpose.

(1) This chapter shall be known and may be cited as the "hearing examiner code."

(2) The city council finds that the present statutory provisions for quasi-adjudicatory hearings in the city have developed on a piecemeal basis, assigning different types of quasi-adjudicatory hearings to the city council, the board of adjustment, and the planning agency. The purpose of this chapter is to substitute a hearing examiner system authorized by chapter 35A.63 RCW for the board of adjustment, and to grant to the hearing examiner final authority in all matters requiring a quasi-adjudicatory hearing heretofore heard by the board of adjustment under the ordinances of the city and the laws of the state. [Ord. 770 § 1, 1988.]

18.94.020 Definitions.

For the purposes of this chapter:

(1) "Ex parte communication" means any oral or written communication made by any person, including a city employee or official, pertaining to a matter that is or will be within the jurisdiction of the hearing examiner made outside of a public hearing and not included in the public record.

(2) "Party" or "party of record" means any person who has appeared at a hearing of the hearing examiner by presenting testimony or making written comment. [Ord. 770 § 3, 1988.]

18.94.030 Establishment of the office of hearing examiner.

Pursuant to chapter 35A.63 RCW, the office of hearing examiner for the city is established. The hearing examiner shall interpret, analyze, and review administrative decisions and matters concerning land use regulation as provided in this chapter and other ordinances. The term hearing examiner as used in this chapter shall include deputy examiners, except that provisions related to appointment of the hearing examiner and any deputy examiner, as set forth in this chapter, shall apply only to that particular office. [Ord. 770 § 2, 1988.]

18.94.040 Appointment – Qualifications – Term and compensation.

(1) The hearing examiner is nominated by the city manager and confirmed by the city council by majority vote.

(2) The deputy hearing examiner is nominated by the city manager upon recommendation of the hearing examiner and likewise confirmed by the city council. Such deputy or examiner pro tem shall have the power to perform the duties of the hearing examiner whenever the hearing examiner is absent, has a conflict of interest, or otherwise so requests.

(3) The qualifications for the office of hearing examiner are expertise in land use law and planning and the training and experience necessary to conduct administrative or quasi-judicial hearings and issue decisions on administrative and land use planning and regulatory matters.

(4) The hearing examiner and deputy hearing examiner shall be appointed to their respective offices for a term which shall initially expire one year following the date of original appointment and thereafter expire four years following the date of each reappointment.

(5) The hearing examiner shall receive compensation at the rate set in the annual budget ordinance of the city. Deputy hearing examiners shall receive compensation pro rata based on the rate set for the hearing examiner.

(6) The city manager is authorized to appoint a temporary hearing examiner for the city during such time as the regular position of hearing examiner is vacant. Such individual shall carry out the functions of the hearing examiner as described in this chapter. The temporary appointment authorized in this section shall not be construed as the initial term of appointment of the hearing examiner contem-

plated under this chapter. Such temporary appointment shall be for a period of no longer than six months. [Ord. 801 § 1, 1989: Ord. 770 § 4, 1988.]

18.94.050 Hearing examiner and deputy hearing examiner – Removal from office.

The hearing examiner or deputy hearing examiner may be removed from office by majority vote of city council only upon proof of one of the grounds for termination contained in the city personnel manual. Prior to such removal, the hearing examiner, or deputy hearing examiner, shall have a right to a pretermination hearing before the city council in executive session, or, if the individual so requests pursuant to RCW 42.30.110(1)(f), in open council session. At the pretermination hearing, the council shall hear all interested parties, and following such hearing the council shall state its reasons for removal in writing, if that is the case. The provisions of this section shall be inapplicable where the hearing examiner serves under the terms of a written contract, in which case the hearing examiner may be removed at the expiration of such contract or prior to expiration in accordance with the terms of the contract. [Ord. 770 § 5, 1988.]

18.94.060 Ex parte communications.

(1) No person may communicate ex parte, directly or indirectly, with the hearing examiner. The hearing examiner may not communicate ex parte, directly or indirectly, with any person, unless the hearing examiner makes such communication part of the public record and provides the opportunity to review and comment upon the communicated matter at a public hearing.

(2) This section does not prohibit ex parte communication regarding procedural matters, or preclude communication by the hearing examiner made solely for the purpose of conveying information regarding the specifics of an application or communication with city employees requesting additional information or clarification, so long as such communication and any information and clarification received is made part of the record.

(3) The hearing examiner is required to disclose all ex parte communications and the circumstances under which they are made and, in the hearing examiner's discretion, may abstain from considering the application that is the subject of such communication. [Ord. 770 § 6, 1988.]

18.94.070 Conflict of interest.

(1) The hearing examiner may not participate in a hearing or decision with respect to which:

(a) The hearing examiner; or

(b) A hearing examiner's relative, which term includes any spouse, parent, child, sibling, and in-law; or

(c) Any hearing examiner's partner; or

(d) A business as to which the hearing examiner:

(i) Is an employee;

(ii) Was an employee within the previous two years;

(iii) Is negotiating or has an arrangement, or understanding with concerning future employment;

has a direct or substantial financial interest, except as provided in this section. "Direct or substantial financial interest" includes a substantial interest in property in proximity to property that is the subject of an application.

(2) Prior to a hearing the hearing examiner shall disclose publicly and on the record any actual or potential interest the hearing examiner or any of the persons described in this section has in the outcome of the hearing.

(3) The hearing examiner may participate in a hearing and decision in which an interest described in this section exists if, and only if, the hearing examiner fully discloses such interest and affirms that such interest will not affect the outcome of the hearing or decision and either:

(a) All persons present or who have submitted written comments to the record prior to the hearing agree in writing, on a form provided by the hearing examiner setting forth the interest, to allow the hearing examiner to participate; or

(b) A deputy hearing examiner is not available to hear and decide the matter.

(4) The exception in subsection (3) of this section is to be used only when reasonably necessary to avoid undue delay or prejudice to a party. There is no exception to the duty to disclose under subsection (2) of this section. [Ord. 770 § 7, 1988.]

18.94.080 Freedom from improper influence.

No person, including city officials, elected or appointed, shall attempt to influence an examiner in any matter pending before him, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his duties in any other way. [Ord. 770 § 8, 1988.]

18.94.090 Budget – Administrative support.

The hearing examiner will be provided with such funds and administrative support as are adopted annually by the city council upon recommendation of the city manager. The hearing examiner will meet annually with the city manager for this purpose. [Ord. 770 § 9, 1988.]

18.94.100 Rules.

The examiner shall have the power to prescribe rules and regulations concerning procedures for hearings authorized in this chapter, to issue summons for and compel the appearance of witnesses, to administer oaths, and to preserve order. The privilege of cross-examination of witnesses shall be accorded all interested parties or their counsel in accordance with rules of the examiner. [Ord. 770 § 10, 1988.]

18.94.110 Jurisdiction and powers.[1]

The hearing examiner exercises all powers and authority, as a first level forum in quasi-adjudicatory matters, formerly exercised by the city council and board of adjustment subject to the provisions of chapter 35.14 RCW. [Ord. 770 § 11(A), 1988.]

18.94.111 Duty to conduct hearings – Decisions to be in writing – Time period.

The examiner shall receive and examine available information, conduct public hearings and prepare a record thereof, and enter final decisions, which have the effect of an administrative decision appealable to the city council. Each decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. In land use matters, such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the city's comprehensive plan and the city's development regulations. Each final decision of a hearing examiner shall be rendered within 14 working days following conclusion of all testimony and hearings, unless a longer period is mutually agreed to in writing by the applicant and hearing examiner. [Ord. 770 § 11(B), 1988.]

18.94.112 Matters to be heard by examiner.

Specifically, the hearing examiner conducts public hearings (where applicable) and renders final decisions on the following:

(1) Type III land use actions as specified by chapter 18.56 DMMC (Land use review procedures);

(2) Appeals of administrative decisions as further provided in this code; and

(3) Such other matters as the city council may from time to time refer. [Ord. 1174 § 71, 1996; Ord. 770 § 11(C), 1988.]

18.94.113 Appeal from administrative decisions – Time for filing – Substantial weight requirement – Standard of review – Failure to exhaust administrative remedies.

Any person or persons aggrieved by any administrative decision, made under a provision of this code which expressly provides that such administrative decision is subject to review by the hearing examiner, may seek review of such decision by the hearing examiner by filing with the city clerk a written

1. DMMC 18.94.110 – 18.94.114 are former DMMC 18.94.110.

notice of appeal of an administrative decision within 10 days of the decision that is being challenged. The city clerk may reject or dismiss any appeal sought to be filed by a person not given the right to appeal under this code, or any incomplete appeal. An appeal will be considered incomplete if it fails to satisfy the requirements set forth above or if it does not provide at least the following:

(1) Applicable filing fee, a schedule of which is available by contacting the city clerk;

(2) The appellant's name, address, telephone number and fax line, and other information which would facilitate prompt communications with the appellant;

(3) A copy of the administrative decision that is the subject of the appeal;

(4) A detailed statement identifying specifically the error of fact, law or procedure made by the administrative decision-maker, and the effect(s) of the alleged error(s) on the decision that is the subject of the appeal; and

(5) A statement of the redress sought by the appellant.

The administrative decision appealed shall be given substantial weight by the hearing examiner. On any such appeal, the standard of review shall be whether the administrative decision was clearly erroneous based on a review of all evidence, or the administrative decision was arbitrary or capricious. Failure of a party to request review by the hearing examiner of an administrative decision shall be a bar to any further judicial review. [Ord. 1174 § 72, 1996; Ord. 770 § 11(D), 1988.]

18.94.114 Decisions – Basis – Conditional.

In land use matters, the examiner's decision shall be based on the policies of the comprehensive plan, shoreline master program, Shoreline Management Act, State Environmental Policy Act, the standards set forth in the various land use regulatory codes of the city, or other applicable programs adopted by the city council. If the hearing examiner finds, in reaching his decision based on the above policies and standards, that the land use regulatory code conflicts with any of the local policies or standards, then the hearing examiner will base his decision on the code provision in effect at the time and notify the city council by memorandum directed through the community development department setting forth the nature of the conflict between policies and regulatory code. The hearing examiner may include in a decision any conditions of approval that are necessary to ensure that the proposal (a) complies with all applicable zoning code criteria and comprehensive plan policies, including the Shoreline Management Act and State Environmental Policy Act, and (b) does not present probable significant adverse environmental impacts to surrounding properties or any other affected area. The hearing examiner may revoke an approved permit for failure to comply with any such conditions. Such conditions may include, but are not limited to the following:

(1) Exact location and nature of development, including additional building and parking area setbacks, screenings in the form of landscaped berms, landscaping, or fencing;

(2) Impact of the development upon other lands;

(3) Hours of use of operation or type and intensity of activities;

(4) Sequence and scheduling of development;

(5) Maintenance of the development;

(6) Duration of use and subsequent removal of structures;

(7) Granting of easements for utilities or other purposes and dedication of land or other provisions for public facilities, the need for which the examiner finds would be generated in whole or in significant part by the proposed development;

(8) Mitigation of any significant adverse environmental impacts including off-site improvements reasonably related to the project;

(9) Provisions which would bring the proposal into compliance with the comprehensive plan policy; and

(10) Posting of performance bonds as required to ensure compliance with any conditions, modifications, and/or restrictions imposed on the proposal. [Ord. 770 § 11(E), 1988.]

18.94.120 Application – Land use matters.

(1) An applicant for a proposal requiring action by the hearing examiner must file an application with the community development department. All applications shall be in a format developed by the community development department. The department may require a pre-application conference before accepting an application. The department shall not accept an application until it is complete and meets all the requirements of the department. The community development department shall charge a fee for each application submitted, such fee to be refundable only during the pre-application period.

(2) The application will be processed in such a manner that it may be heard before the hearing examiner within 90 days of the filing of the application. Upon completion of a review of the application, including environmental review, the community development department shall notify the applicant and the hearing examiner that it is ready to proceed with the hearing. A hearing date shall be set within 30 days of such notification to the hearing examiner. The time limits described in this section may be extended by the hearing examiner upon good cause shown by the applicant or community development department. [Ord. 840 § 1, 1990: Ord. 770 § 12, 1988.]

18.94.130 Concurrent applications and permit review process.

Any party proposing a land use project which would require more than one of the permits or approvals under the city's land use regulations, including the shoreline management plan and the State Environmental Policy Act, or which in addition to at least one such permit or approval would require a use permit under chapter 18.32 DMMC may submit a concurrent application to the community development department, on forms furnished by the department, containing all necessary information. The concurrent application shall thereafter be jointly processed by the city subject to the most lengthy time limitation applicable to any of the required permits or approvals. A reduced fee may be prescribed for concurrent applications reflecting cost savings realized through unified processing. [Ord. 770 § 13, 1988.]

18.94.140 Dismissal of application.

The hearing examiner may dismiss an application, with or without prejudice, pursuant to a request by the applicant to withdraw the application, or for failure of the applicant to attend all required hearings or provide all requested information. [Ord. 770 § 14, 1988.]

18.94.150 Notice of hearing – Required.

(1) All applications to be heard by the hearing examiner, except appeals of an administrative decision, require public notice. Unless the ordinance governing the application provides otherwise, written notice is mailed to all persons entitled by this chapter to receive notice and notice is given by at least one publication in the official newspaper of the city not less than 15 days prior to the scheduled hearing date. The form of the notice and the manner in which it is given shall conform with the requirements of this chapter. The hearing examiner may require or provide such additional notice as deemed necessary to serve the public interest, including publication in a newspaper of general circulation. The community development department shall be responsible for ensuring that appropriate public notice is given.

(2) Public information signs shall be installed, as provided in chapter 16.04 DMMC (SEPA Rules).

(3) On appeals from administrative decisions notice shall be required only to the administrator whose decision is being appealed and the appellant. [Ord. 1174 § 73, 1996; Ord. 770 § 15, 1988.]

18.94.160 Notice of hearing – Content.

Each public notice required by this chapter shall contain at least the following information:

(1) The date, time, and place of the hearing, as designated by the hearing examiner, except legal holidays, specified in DMMC 1.01.055;

(2) A legal description and common location description of the property;

(3) A description of the proposed action;

(4) A statement that any person may appear or be heard and that written comments will be accepted and made part of the record;

(5) A statement that the hearing will be held pursuant to the rules of procedure of the hearing examiner; and

(6) The name, address, and office telephone number of the person within the community development department or other city department from whom additional information may be obtained. [Ord. 1321 § 7, 2003: Ord. 770 § 16, 1988.]

18.94.170 Persons entitled to notice.

(1) The community development department shall cause written public notice to be mailed to all owners of record of property located within 300 feet, exclusive of public rights-of-way, of the property that is the subject of the application, including any property that is contiguous and under the same or common ownership and control.

(2) The community development department shall cause written public notice to be mailed to:

(a) Any person who has made a written request to receive such notice;

(b) Any jurisdiction or government agency that might have an interest in or be affected by a proposed action, as determined by the community development department. [Ord. 770 § 17, 1988.]

18.94.180 Notice of hearing – When given.

Notices of hearings required under this chapter shall be mailed or posted at least 15 days prior to the scheduled hearing date. [Ord. 1174 § 74, 1996; Ord. 770 § 18, 1988.]

18.94.190 Effect of notice.

(1) Failure of a person entitled to notice to receive notice shall not affect the jurisdiction of the hearing examiner to hear the application at the time and place scheduled and to render a decision, if the notice was properly mailed and the property properly posted.

(2) A person is deemed to have received notice if that person appears at the hearing or submits a written statement regarding the hearing even if notice was not properly mailed.

(3) If required notice is not given or posted and actual notice not received, the hearing examiner may reschedule the hearing or keep the record open on the matter to receive additional evidence. [Ord. 770 § 19, 1988.]

18.94.200 Staff reports.

(1) The community development department shall coordinate and assemble the comments and remarks of other city departments and make a written report to the hearing examiner on all applications.

(2) The report of the community development department generally contains a description of the proposed use, a summary of applicable zoning and plan requirements and policies, other applicable requirements and policies, recommended findings and conclusions relating to the proposed use, a recommendation, and proposed conditions if the recommendation is for approval.

(3) At least seven days prior to the scheduled hearing, the department shall file its report with the hearing examiner and cause a copy to be mailed to the applicant or the applicant's representative. A copy of the report will be made available to any other person if the request for the copy is made at least 24 hours prior to the scheduled hearing.

(4) If a report is not available as provided in this section, the hearing examiner may reschedule or continue the hearing upon his own motion or upon the motion of a party, or the hearing examiner may decide the matter without the report. [Ord. 770 § 20, 1988.]

18.94.210 Presentation of evidence.

(1) Except for hearings on appeals of administrative decisions, any person may testify. In hearings on appeals from administrative decisions, testimony shall be limited to witnesses designated by the administrator whose decision is being appealed, witnesses designated by the appellant, and witnesses designated by any person granted the right of intervention by the hearing examiner.

(2) All reasonably probative (material and relevant) evidence will be permitted. The judicial rules of evidence shall not be strictly

applied. The hearing examiner may accord such weight to the evidence as is deemed appropriate.

(3) The hearing examiner may take official notice of judicially cognizable facts and of general, technical, and scientific facts within the hearing examiner's specialized knowledge, in accordance with the rules of procedure and so long as any such noticed facts are included in the record and findings.

(4) The hearing examiner has the authority to call witnesses and request written evidence in order to obtain the information necessary to make a decision. The hearing examiner may request written comment from and the appearance of the designated representative of any city department that has an interest in or may affect an application for a proposed use.

(5) The hearing examiner may require that testimony be given under oath or affirmation.

(6) The hearing examiner may allow the cross-examination of witnesses.

(7) The hearing examiner may impose reasonable limitations on the number of witnesses to be heard and the nature and length of their testimony to avoid repetitious testimony, expedite the hearing, or avoid continuation of the hearing. This subsection is not intended to preclude or exclude from the record any relevant testimony or evidence.

(8) No testimony or oral statement regarding the substance or merits of an application is allowable after the close of the public hearing. No documentary material submitted after the close of the hearing will be considered by the hearing examiner unless additional time to submit such material has been granted and all parties are given an opportunity to review the material and file rebuttal material or argument. [Ord. 840 § 2, 1990: Ord. 770 § 21, 1988.]

18.94.220 Rehearing.

(1) The hearing examiner may continue or reopen a hearing to take additional testimony, to receive additional evidence, or for any other cause that is reasonable or appropriate; provided, the order continuing or reopening the hearing is entered prior to the issuance of the decision in the case.

(2) If the hearing examiner decides, prior to the close of the hearing, to continue the hearing and then and there specifies the date, time, and place of the subsequent hearing, no further notice is required. If a decision is made to reopen a hearing after the conclusion of the hearing, all parties who originally had notice must be given at least 15 days' notice of the date, time, place, and nature of the subsequent hearing, and the notice shall be published as provided in this chapter.

(3) A hearing before the hearing examiner shall constitute the hearing of the city council. No new testimony shall be taken or new evidence accepted by the city council; provided, however, the city council may remand a matter to the hearing examiner, pursuant to the hearing examiner code. [Ord. 1174 § 75, 1996; Ord. 770 § 22, 1988.]

18.94.230 Record of hearing – Content.

(1) The hearing examiner shall establish and maintain a record of all proceedings and hearings conducted including a sound recording which shall be accurately transcribed as necessary.

(2) The record of a hearing conducted by the hearing examiner shall include, but is not limited to, the following contents:

(a) The written application or appeal;

(b) The names and addresses of all participants;

(c) The community development department's written report;

(d) All evidence received or considered by the hearing examiner;

(e) The decision or recommendation of the hearing examiner;

(f) Tape recordings of all proceedings; and

(g) Records of notice given of the hearing. [Ord. 770 § 23, 1988.]

18.94.240 Decision – Content and distribution.

(1) The decision of the hearing examiner shall include at least the following content:

(a) A description of the proposed use or action;

(b) The location of the property;

(c) A statement regarding the status of SEPA review of the proposed actions;

(d) The date, time, and place of the hearing(s);

(e) A list of persons who testified or a summary of such list;

(f) A list of exhibits, or a summary of such list;

(g) A statement identifying the ordinance or criteria governing the application;

(h) Findings of fact and conclusions relating the proposed use to the ordinance and other criteria governing the application; and

(i) The decision denying or approving the application and any conditions, if applicable.

(2) The hearing examiner shall issue a written decision within 14 days of the date of closing of the hearing, unless the applicant agrees in writing to a longer time.

(3) A copy of the decision shall be mailed or otherwise made available to:

(a) The applicant;

(b) The community development department and all other city departments affected by or interested in the decision;

(c) In the case of an administrative appeal, the appellant and the administrative department head; and

(d) Except in cases of appeal of an administrative decision, all other persons who request that they receive a notice of the decision. [Ord. 770 § 24, 1988.]

18.94.250 Decision – Reconsideration.

(1) The applicant, an opponent of record, or a city department may petition the hearing examiner in writing to reconsider a decision. Such petition must be filed within 10 days of the date of the written decision.

(2) The hearing examiner, within seven days of the date the petition is filed, shall determine whether to deny the petition, issue a new decision, or reopen the hearing as provided in this chapter. The hearing examiner may summarily dismiss a petition for reconsideration that is without merit or brought primarily to secure a delay.

(3) The hearing examiner may reconsider a decision if it is found that:

(a) An error of fact, law, or procedure that is more likely than not to affect the outcome of the decision has been made; or

(b) The petitioner is seeking to enter previously unavailable information that is more likely than not to affect the outcome of the decision.

(4) The filing of a petition for reconsideration shall modify the time for filing an appeal of a decision of the hearing examiner as follows:

(a) If the petition for reconsideration is denied, the time from the date the petition is filed to the date the written denial is issued shall not be counted in the 10 days given to file an appeal by DMMC 18.94.260 (Appeals from decision of hearing examiner).

(b) If the petition is approved, and upon reconsideration the original decision is unchanged, the time from the date the petition is filed to the date the written decision following the reconsideration is issued shall not be counted in the 10 days given to file an appeal by the hearing examiner code.

(c) If the petition for reconsideration is approved and upon reconsideration the original decision is changed, the appeal period provided in DMMC 18.94.260 (Appeals from decision of hearing examiner) starts from the date of the written decision of the reconsideration. [Ord. 1174 § 76, 1996; Ord. 770 § 25, 1988.]

18.94.260 Appeals from decision of hearing examiner.

(1) The applicant, a party of record, or a city department may appeal to the city council any decision of the hearing examiner that does not involve a proposed land use action by filing with the city clerk a written notice of appeal within 10 calendar days of the date of the written decision of the hearing examiner.

(2) The city clerk may reject or dismiss any appeal sought to be filed by a person not given the right of appeal by this section, or any incomplete appeal. An appeal will be considered incomplete if it fails to follow the criteria set forth in this chapter regarding content or timing of appeal.

(3) A party of record may appeal to the Superior Court of Washington for King County any hearing examiner decision in response to a proposed Type I, II, or III land use action by filing a land use petition as specified by chapter 36.70C RCW. [Ord. 1174 § 77, 1996; Ord. 840 § 3, 1990: Ord. 770 § 26, 1988.]

18.94.270 Content of appeal.

An appeal shall not contain any new facts or evidence. An appeal shall contain all of the following:

(1) The file number of the decision being appealed;

(2) The name and address of the appellant;

(3) A detailed statement identifying specifically the error of fact, law, or procedure, and the effect of the alleged error on the decision;

(4) A statement of the redress sought by the appellant;

(5) Filing fee as established by the city manager. A schedule of applicable fees is available by contacting the city clerk. [Ord. 1174 § 78, 1996; Ord. 770 § 27, 1988.]

18.94.280 Timing of appeal.

(1) Within two days of receiving a timely and complete request for appeal, the city clerk shall forward the appeal to the hearing examiner. Within 28 days of receiving the appeal, the hearing examiner shall cause a verbatim transcription of the hearing to be prepared and forward a copy of the appeal with the remaining record of the hearing to the city council with a request that a date for consideration be set. Copies of the record, to the extent practicable, are sent to the appellant and the applicant if different than the appellant.

(2) At the next regular meeting of the city council following receipt of the record from the hearing examiner, the council will schedule the appeal for consideration so that the appeal will be considered within 60 days from the filing of the record with the council. The city clerk shall give notice of the date, time, and place of the council's consideration of the appeal to all parties of record. [Ord. 840 § 4, 1990: Ord. 770 § 28, 1988.]

18.94.290 City council action on appeal – Procedure – Burden of proof – Criteria to affirm, modify, reverse, or remand.

(1) The city council may affirm, reverse, modify, or remand the decision of the hearing examiner. The city council may adopt all or portions of the hearing examiner's findings and conclusions. No new testimony shall be taken or new evidence accepted by the city council, except as provided for de novo consideration of a matter as authorized by subsection (3) of this section. The decision of the city council shall be in writing in the city council minutes and shall contain modified or amended findings and conclusions wherever such findings or conclusions are different from those of the appealed decision. Each material finding shall be supported by evidence in the record. The burden of proof with regard to modification or reversal of the decision of the examiner shall rest with the appellant. The decision of the hearing examiner is to be given substantial weight by the city council.

(2) The procedure on appeal to the city council shall be as follows: The presiding officer shall at the onset establish time limitations for oral argument by the appellant and opponent to the appeal; provided, that the appellant may reserve a portion of its time for rebuttal; and provided further, that such time limitations shall not be less than 10 minutes per side. Such oral argument shall be confined to the record and to any alleged errors therein or to any allegation of irregularities in procedure before the hearing examiner. If the city council finds that:

(a) There has been substantial error; or

(b) The proceedings were materially affected by irregularities in procedure; or

(c) The hearing examiner's decision was unsupported by material and substantial evidence in view of the entire record as submitted; or

(d) The hearing examiner's decision is in conflict with the city's comprehensive plan; or

(e) Insufficient evidence was presented as to the impact of the land use action on the surrounding area; or

(f) The appellant is seeking to enter information that was not previously available for reasons beyond the control of that party and that such information is more likely than not to affect the outcome;

it may remand the matter for reconsideration before the hearing examiner, or reject or modify the hearing examiner's decision; provided, any rejection or modification of the hearing examiner's decision shall be in the form of written findings and conclusions by council which are supported by evidence in the record.

(3) For a hearing examiner decision that is not related to a proposed land use action, the city council may reject the hearing examiner's decision and set a public hearing for a date certain at which time the city council will consider the application de novo, or for any reason listed in the preceding subsections (a), (b), (c), or (f) it may choose to modify the hearing examiner's decision; provided, any such modification shall be in the form of written findings and conclusions by council which are supported by evidence in the record.

(4) Affirmance. If the city council finds neither a procedural nor a factual basis for the appeal and concludes that there has been no substantial error in the hearing examiner's decision, the city council may adopt the findings of the hearing examiner and affirm the decision of the hearing examiner.

(5) Reversal or Remand Modification.

(a) If the council remands the decision to the hearing examiner, it sets forth in the minutes its reasons and the issues to be considered by the hearing examiner on remand.

(b) Within five days of the date of the council's written remand order, the hearing examiner mails notice of the council's decision, the date, time, and place of the remand hearing, and the issues to be considered to all parties of record. The hearing examiner holds a public hearing, limited to the issues set forth in the council's order, within 30 days of the date of the remand order.

(c) If the city council finds a procedural or a factual basis for the appeal and concludes that there has been a substantial error in the hearing examiner's decision, the city council may adopt new findings and reverse or modify the decision of the hearing examiner.

(6) The participation of the city attorney or any member of the legal department of the city in such appeal shall be limited to that of legal advisor to the city council. [Ord. 1174 § 79, 1996; Ord. 840 § 5, 1990: Ord. 770 § 29, 1988.]

18.94.300 Appeal from decision of the city council.

If the decision of the city council requires adoption of an ordinance, the decision of the city council shall be considered final on the effective date of the ordinance. Otherwise, the decision of the city council shall be considered final as of the date upon which the city council casts its vote to affirm, modify, or reverse the hearing examiner. The action of the city council, approving, modifying, or reversing a decision of the examiner, shall be final and conclusive, unless an aggrieved party, who was a party of record in the hearing before the examiner and city council, files a land use petition in the Superior Court of Washington for King County as specified by chapter 36.70C RCW, as presently constituted or as may be subsequently amended. However, appeals from city council decisions on shoreline substantial development permits shall be taken to the shoreline hearings board pursuant to the provisions of chapter 90.58 RCW, as presently constituted or as may be subsequently amended. For purposes of the land use petition proceedings, the petitioner shall be responsible for transcribing the record and bear the costs of the transcription. [Ord. 1174 § 80, 1996; Ord. 770 § 30, 1988.]

18.94.310 Variance criteria.

The hearing examiner may grant a variance, in specific cases, from the provisions of the zoning ordinance or other land use regulatory ordinances as the city may adopt, which will not be contrary to the public interest; but only where, owing to special conditions, a literal enforcement of the provisions of such ordinance(s) would result in unnecessary hardship. A variance from the provisions of such

ordinance(s) shall not be granted by the hearing examiner unless the hearing examiner finds that all of the following facts and conditions exist:

(1) The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and

(2) That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

(3) That the special conditions and circumstances do not result from the actions of the applicant; and

(4) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and

(5) The authorization of such variance will not adversely affect the implementation of the comprehensive land use plan; and

(6) That the granting of such a variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of the other property in the same zone or vicinity; and

(7) No conforming use of neighboring lands, structures, or buildings in the same zone, and no permitted use of lands, structures, or buildings in other zones, shall be considered grounds for issuance of a variance; and

(8) In granting any variance, the hearing examiner may prescribe appropriate conditions and safeguards in conformity with the provisions of the zoning ordinance or other land use regulatory ordinances as the city may adopt. Violation of such conditions and safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this section; and

(9) With respect to uses of land, buildings, and other structures, this section is declared to be a definition of the public interest by the city council, and the spirit of this section will be controverted by any variance which permits a use not generally or by special exception permitted in the zone involved, or any use expressly or by implication prohibited, by the terms of this section in the zone; and

(10) Therefore, under no circumstances shall the hearing examiner grant a variance to permit a use not generally or by special exception permitted in the zone involved, or any use expressly or by implication prohibited, by the terms of the zoning ordinance in the zone. [Ord. 1237 § 3, 1999; Ord. 770 § 31, 1988.]

18.94.320 Conditional uses – Criteria.

The hearing examiner may grant a conditional use permit after a hearing if, but only if, sufficient evidence is presented that the characteristics of any such proposed use shall not be unreasonably incompatible with the type of uses permitted in surrounding areas, or, that the proposed use shall not be unreasonably incompatible with the type of uses permitted in surrounding areas if certain conditions are attached to the proposed use. Furthermore, the hearing examiner shall give due regard for the nature and condition of all adjacent uses and structures and any testimony presented with reference to such adjacent uses and structures, and, in authorizing a conditional use, may impose such requirements and conditions with respect to location, landscaping, traffic control, dedication, maintenance, and operation in addition to those expressly set forth in this chapter and other ordinances as may be deemed necessary for the protection of adjacent properties and the public interest. [Ord. 770 § 32, 1988.]

18.94.330 Appeal fees.

The fee for appeals made pursuant to this chapter, excluding DMMC 18.94.300, shall be set by administrative order of the city manager and shall be payable in advance, provided: (1) the city manager shall waive such fees upon a finding of indigence according to standards adopted by the Des Moines municipal court, and (2) the decision-making body shall have discretion and jurisdiction to direct that any fees paid shall be refunded to a prevailing

appellant upon a finding of just cause. [Ord. 840 § 6, 1990.]

18.94.340 Reference to board of adjustment.

All references to the board of adjustment in previously enacted ordinances and resolutions of the city shall hereafter mean the hearing examiner. [Ord. 801 § 3, 1989.]

Chapter 18.96

PROTECTION OF HISTORIC AND ARCHEOLOGICAL RESOURCES

Sections

18.96.010 Designation criteria for historic or archeological property of local significance.

A building, site, zone, structure, or object may be designated a city historic or archeological property of local significance if: (1) it is listed or eligible for listing in the State or National Register of Historic Places, or is designated or eligible for designation as a King County Landmark; or (2) the city council determines it meets any of the following criteria:

(1) It is associated with events that have made a significant contribution to the broad patterns of national, state, or local history;

(2) It is associated with the life of a person that is important in the history of the community, city, state, or nation or who is recognized by local citizens for substantial contribution to the neighborhood or community;

(3) It embodies the distinctive characteristics of a type, period, style, or method of construction;

(4) It is an outstanding or significant work of an architect, builder, designer, or developer who has made a substantial contribution to the art;

(5) It has yielded, or may be likely to yield, information important in prehistory or history;

(6) Because of its location, age or scale, it is an easily identifiable visual feature of a neighborhood, community, or the city and contributes to the distinctive quality or identity of such neighborhood, community or the city, or because of its association with significant historical events or historic themes, association with important or prominent persons in the community or the city, or recognition by local citizens for substantial contribution to the neighborhood or the city. [Ord. 1124 § 1, 1995.]

18.96.020 Historic or archeological properties of local significance.

The city council has determined that the properties identified within the document, titled *Historic Properties Survey: City of Des Moines*, dated April 1995, meet one or more of the criteria set forth in DMMC 18.96.010 and shall be designated as historic or archeological properties of local significance. Additional properties may by designated as historic or archeological properties of local significance by the city council. [Ord. 1124 § 2, 1995.]

18.96.030 Designation of additional historic or archeological properties of local significance.

(1) The city council is authorized to designate additional sites, zones, buildings, structures, and objects within the city as historic or archeological properties of local significance.

(2) Prior to a property's designation as a historic or archeological property of local significance, an expert in historic preservation shall be retained for evaluation of the subject property. The expert shall have training and demonstrated expertise in architecture, historic preservation, or history. The expert shall evaluate the subject property in relation to the criteria specified in DMMC 18.96.010 and submit a written recommendation regarding the proposed designation to the city council. The owner of the subject property shall be notified in writing of the evaluation and pending action regarding designation, including procedures for removing the property from consideration.

(3) The city council shall conduct a public hearing regarding a proposed designation of historic or archeological property of local significance. The city council shall adopt written findings in conjunction with the designation of a property as a historic or archeological property of local significance.

(4) Property owners who wish to remove their property from the historic properties survey, or from consideration for designation, may do so by submitting a written request to the community development director who shall remove the property from consideration, or the survey. [Ord. 1124 § 3, 1995.]

18.96.040 Limit on noise impacts to historic or archeological properties of local significance.

Historic or archeological properties of local significance shall not be subject to adverse land uses that generate exterior noise exposure levels exceeding 55 L_{dn} dBA, or existing levels as of April 20, 1995, whichever is greater. A reduction in the exterior noise level (greater than 55 L_{dn}) that existed as of April 20, 1995 shall become the new maximum exterior noise level. [Ord. 1124 § 4, 1995.]

18.96.050 Requirement for noise mitigation plan.

When the community development director determines that a proposed land use may impact a historic or archeological property of local significance by increasing exterior noise levels above the maximum level permitted by this chapter, the land use proponent shall submit a noise mitigation plan to the city for review and approval before required permits are issued to allow the project to proceed. [Ord. 1124 § 5, 1995.]

18.96.060 Landmarks commission created – Membership and organization.

(1) The city of Des Moines hereby designates and empowers the King County landmarks commission ("commission"), established pursuant to King County Code (K.C.C.) chapter 20.62, to act as the landmarks commission for city-owned landmarks in the city of Des Moines pursuant to the provisions of this chapter.

(2) A special member of the commission, as provided for in K.C.C. 20.62.030, shall be appointed by the mayor and confirmed by a majority of the city council. Such special member shall be advisory only and shall have no authority to bind the city council without a prior affirmative vote of a majority of the city council. Such special member shall be a resident of the city and shall have a demonstrated interest and competence in historic preservation. Such appointment shall be made for a three-year term and the special member shall serve until his or her successor is duly appointed and confirmed. In the event of a vacancy, an appointment shall be made to fill the vacancy in the same manner and with the same qualifications as if at the beginning of the term, and the person appointed to fill the vacancy shall hold the position for the remainder of the unexpired term. Such special member may be reappointed, but may not serve more than two consecutive, three-year terms. Such special member shall be deemed to have served one full term if such special member resigns at any time after appointment or if such special member serves more than two years of an unexpired term. The special member of the commission shall serve without compensation.

(3) The commission shall file its rules and regulations, including procedures consistent with this chapter, with the city clerk. [Ord. 1347 § 1, 2004.]

18.96.070 King County Code chapter 20.62 adopted.

For purposes of this chapter, the city adopts King County Code (K.C.C.) chapter 20.62, except as follows:

(1) K.C.C. 20.62.020 – Definitions. Paragraph I is changed to read: "'Director' is the responsible official who approves building permits for the City."

Paragraph F is changed to read: "'Council' is the Des Moines City Council."

(2) K.C.C. 20.62.040 – Designation Criteria. All references to "King County" are changed to read "City of Des Moines."

(3) K.C.C. 20.62.050 – Nomination Procedure. The following language is added:

> No historic resource may proceed through the nomination procedure of King County Code Section 20.62.050 until the Des Moines City Council has approved the historic resource for nomination. A minimum of four Councilmembers must vote in favor before the resource is eligible for the nomination. Said approval by the Council is a condition precedent to any nomination procedure.

(4) K.C.C. 20.62.070 – Designation Procedure. All references to "King County" are changed to read "City of Des Moines."

(5) K.C.C. 20.62.080 – Certificate of Appropriateness Procedure. The last sentence of Paragraph A is deleted.

(6) K.C.C. 20.62.110 – Appeal Procedure. The following language is added:

> The decisions of the Commission pertaining to real property within the City of Des Moines may be appealed to and reversed or modified by the Des Moines City Council.

[Ord. 1347 § 2, 2004.]

18.96.080 Adoption by reference.

(1) Chapter 20.62 of the King County Code (K.C.C.), adopted by reference in DMMC 18.96.070 and by this section, is adopted pursuant to RCW 35A.12.140 as though fully set forth in this chapter, together with any amendments and additions provided in this chapter, and is applicable within the city as presently constituted or as may be subsequently amended.

(2) Not less than one copy of chapter 20.62 K.C.C., as codified, and suitably marked

to indicate amendments and additions, is filed in the office of the Des Moines city clerk and is available for use and examination by the public. [Ord. 1348 § 1, 2004.]

18.96.090 Code conflicts.

As to city-owned buildings, in case of any conflict between chapter 18.96 DMMC and DMMC 18.96.060 and 18.96.070, DMMC 18.96.060 and 18.96.070 shall govern. [Ord. 1348 § 2, 2004.]

Chapter 18.98

DEVELOPMENT REGULATIONS ON LAND ACQUIRED AND OWNED BY PUBLIC ENTITIES

Sections

18.98.010 Planning and zoning jurisdiction on lands acquired by public entities.

(1) All land within the city acquired and owned by public entities is subject to the zoning and planning jurisdiction of the city.

(2) All land within the city acquired and owned by public entities shall be developed in a manner consistent with planning, zoning, development, health, and safety requirements of the city. [Ord. 1126 § 1, 1995.]

18.98.020 Limits on use of land acquired and owned by public entities.

(1) Except to the extent otherwise provided in state law, all land within the city acquired and owned by public entities after April 21, 1995, is designated for use as open space land or for public facilities designed to benefit the city and its residents (e.g., fire station, school building), except for land rezoned through established procedures.

(2) Except to the extent otherwise provided in state law, property within the city acquired and owned by public entities may not be used for new commercial activities, unless the city makes a finding that such land uses are of value to the city and should be permitted. All commercial land uses of property are subject to city land use regulations and are restricted in accordance with the city's land

use plans, zoning ordinances and development regulations.

(3) Modification, demolition, and relocation of buildings and structures on land within the city acquired and owned by public entities shall require city approval and permits. [Ord. 1126 § 2, 1995.]

18.98.030 Requirements for development on lands acquired and owned by public entities.

(1) Areas within the city acquired and owned by public entities shall perform an environmental survey to investigate soil and site contamination before the city will allow site preparation, construction or demolition activities. All identified soil and site contamination shall be remediated as a condition of site modification.

(2) Any site development activity on land within the city acquired and owned by public entities shall meet city zoning regulations. [Ord. 1126 § 3, 1995.]

18.98.040 Management of streets and street rights-of-way within and adjacent to land acquired by public entities.

The city shall retain full authority over the management, operation, and maintenance of streets and street rights-of-way within the city acquired and owned by public entities. [Ord. 1126 § 4, 1995.]

Chapter 18.99

ADULT ENTERTAINMENT FACILITY ZONING

Sections

18.99.010 Findings of fact.

(1) The city council is committed to protecting the general welfare of the city through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses while preserving constitutionally protected forms of expression.

(2) The city has made a detailed review of the national record, including studies from the cities of New York, Indianapolis, and Los Angeles, the police records of various cities, and court decisions regarding adult entertainment uses, including adult retail establishments. The city council finds that adult entertainment uses, including adult retail establishments, require special supervision from public safety agencies in order to protect and preserve the health, safety, and welfare of the patrons and employees of said business as well as the citizens of the city.

(3) The city council finds that concerns about crime and public sexual activity generated and/or occurring within or near adult entertainment and adult retail establishments are legitimate, substantial and compelling concerns of the city which demand reasonable regulation.

(4) The city council finds that adult entertainment and adult retail establishments, due to their nature, have secondary adverse impacts upon the health, safety, and welfare of the citizenry through increases in crime and opportunity for spread of sexually transmitted diseases.

(5) There is convincing documented evidence that adult entertainment and adult retail establishments have a detrimental effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the downgrading of quality of life and property values and the spread of urban blight. Reasonable regulation of the location of these facilities will provide for the protection of the community, protect residents, patrons, and employees from the adverse secondary effects of such facilities.

(6) The city recognizes that adult entertainment and adult retail establishments, due to their very nature, have serious objectionable operational characteristics, particularly when located in close proximity to residential neighborhoods, day care centers, religious facilities, public parks, schools, and public facilities open to families, such as post offices and medical clinics, and thereby having a deleterious impact upon the quality of life in the surrounding areas. It has been acknowledged by courts and communities across the nation that state and local governmental entities have a special concern in regulating the operation of such businesses under their jurisdiction to ensure the adverse secondary effects of the establishments are minimized.

(7) This chapter is intended to protect the general public health, safety, and welfare of the citizenry of the city through the regulation of the location of adult entertainment and adult retail establishments. The regulations set forth herein are intended to control health, safety, and welfare issues, the decline in neighborhood conditions in and around adult entertainment and adult retail establishments, and to isolate dangerous and unlawful conduct associated with these facilities.

(8) It is not the intent of this chapter to suppress any speech activities protected by the First Amendment to the United States Constitution, or Article 1, Section 5 of the Washington State Constitution, but to enact content-neutral legislation which addresses the negative secondary impacts of adult entertainment and adult retail establishments.

(9) It is not the intent of the city council to condone or legitimize the distribution of obscene material, and the city council recognizes that state and federal law prohibits the distribution of obscene materials.

(10) The city council, at its duly advertised public hearing on September 13, 2001, considered the subject matter of adult entertainment and adult retail establishments, at which public hearing the city council received comments from the public on that subject matter, which the city council believes to be true, and which, together with the findings heretofore set forth, form the basis for the adoption of the ordinance codified in this chapter. [Ord. 1288 § 4(part), 2001.]

18.99.020 Adult entertainment facilities prohibited in certain areas.

(1) Adult entertainment facilities as defined in this title are prohibited:

(a) Within 1,000 feet of any residential zone or any single-family or multiple-family residential use;

(b) Within 1,000 feet of any public or private elementary or secondary school;

(c) Within 1,000 feet of any day care center for children, nursery, or preschool;

(d) Within 1,000 feet of any church or other facility or institution used primarily for religious purposes;

(e) Within 1,000 feet of any public park or public facility open to families, including post offices, City Hall, and medical clinics; and

(f) Within 1,000 feet of any other adult retail use.

As used herein, the distances shall mean the straight-line distance between the edge or corner of the property on which the adult retail use is located to the nearest edge or corner of the property of another adult retail use or any of the sensitive uses set forth above.

(2) Exception. Adult entertainment facilities, as defined in this title, shall be permitted within the PR-C1 zone:

(a) So long as such uses are located within a building that fronts Pacific Highway South and obtains its access exclusively from such highway; and

(b) So long as such uses are located no less than 500 feet from any other adult entertainment or adult retail use. [Ord. 1288 § 4(part), 2001.]

18.99.030 Amortization of any nonconforming use.

Any adult entertainment, activity, use, or retail use located within the city limits on the effective date of the ordinance codified in this section that is made nonconforming by this chapter shall be terminated within one year; provided, however, that such termination date may be extended upon the approval of an application filed with the city within 120 days of the effective date of the ordinance codified in this section requesting an extension of such one-year amortization period. The decision on whether or not to approve any extension period and the length of such period shall be based upon the applicant clearly demonstrating extreme economic hardship based upon an irreversible financial investment or commitment made prior to the effective date of the ordinance codified in this section, which precludes reasonable alternative uses of the subject property. [Ord. 1288 § 4(part), 2001.]

18.99.040 Conflicts.

In the event of a conflict between this chapter and any other provision of this code, this chapter applies and supersedes. [Ord. 1288 § 4(part), 2001.]