

ORDINANCE NO. 1628

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to zoning and the regulation of temporary encampments for the homeless, amending DMMC 18.01.050 by adding definitions, amending DMMC 18.20.080A project review chart, and adding and codifying a new section entitled "*Temporary Homeless Encampments.*"

WHEREAS, there are many homeless persons in our region that are in need of shelter and other services that are not being provided by the state and local governments, and

WHEREAS, in many communities, religious organizations play an important role in providing needed services to the homeless, including the provision of shelter upon property owned by the religious organization, and

WHEREAS, establishing temporary use provisions that allow temporary homeless encampments enable religious institutions in our community to perform a valuable public service that, for many, offers a temporary, stop-gap solution to the larger social problem of increasing numbers of homeless persons, and

WHEREAS, in 2010, the Washington State Legislature passed Engrossed Substitute House Bill 1956 (ESHB 1956), codified as RCW 36.01.290, which authorized religious organizations to host temporary encampments for homeless persons on property owned or controlled by a religious organization, and

WHEREAS, RCW 35.21.915 prohibits a city or town from enacting an ordinance or regulation, or take any other action that (a) Imposes conditions other than those necessary to protect public health and safety and that do not substantially burden the decisions or actions of a religious organization regarding the location of housing or shelter for homeless persons on property owned by the religious organization; (b) Requires a religious organization to obtain insurance pertaining to the liability of a municipality with respect to homeless persons housed on property owned by a religious organization or otherwise requires the religious organization to indemnify the municipality against such liability; or (c) Imposes permit fees in excess of the actual costs associated with the review and approval of the required permit applications, and

WHEREAS, on June 23, 2014, Washington Cities Insurance Authority completed their 2014 Annual Review and Audit of the City of Des Moines' land use practices and one of the audit findings related to Des Moines' compliance with legislation on Temporary Encampments for the Homeless, pursuant to RCW 35.21.915, RCW 35A.21.360, and RCW 36.01.290, and

WHEREAS, Draft Ordinance No. 15-030 provides guidance in regulating temporary homeless encampments and provides the City with broad discretion to protect the health and safety of our citizens, and

WHEREAS, the City Council Finance and Economic Development Committee met on May 14, 2015, July 9, 2015, August 13, 2015, and September 17, 2015 to review, discuss, and provide guidance on the development of Draft Ordinance No. 15-030, and directed staff to bring the Draft Ordinance to the full Council, and

WHEREAS, on August 20, 2015 the City Council passed Resolution 1306 setting a Public Hearing on November 5, 2015, or as soon thereafter as the matter could be heard, to consider Draft Ordinance 15-030, and

WHEREAS, the Planning, Building and Public Works Director acting as the SEPA responsible official reviewed this proposed non-project action and determined that the changes proposed by this Ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (SEPA), a final determination of non-significance was issued and published on October 5, 2015, in the *Seattle Times*, and the appropriate comment period expired on October 20, 2015, and the appeal period concluded on October 30, 2015, and

WHEREAS, a notice of intent to adopt the proposed code amendments was sent to the Washington State Department of Commerce for a 15-day expedited review and comment period in accordance with State law, and

WHEREAS, notice of the public hearing was issued on October 5, 2015 in accordance with the DMMC, and

WHEREAS, a public hearing was held on the 5th day of November, 2015, and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the amendments contained in Draft Ordinance No. 15-030 are appropriate and necessary; now therefore

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. DMMC 18.01.050 and section 5 of Ordinance No. 1591 shall be amended to add the following definitions:

"Religious organization" means the federally protected practice of a recognized religious assembly, school, or institution that owns or controls real property.

"Temporary Homeless encampment" means a group of homeless persons temporarily residing out of doors on a site with services provided by a sponsor and supervised by a managing agency.

"Temporary homeless encampment managing agency" means an organization that has the capacity to organize and manage a temporary homeless encampment. A managing agency may be the same entity as the sponsor.

"Temporary homeless encampment sponsor" means an entity that has an agreement with the managing agency to provide basic services and support for the residents of a temporary homeless encampment and liaison with the surrounding community and joins with the managing agency in an application for a temporary use permit. A sponsor may be the same entity as the managing agency.

Sec. 2. DMMC 18.20.080A and section 58 of Ordinance No. 1591 are amended as follows:

18.20.080A Project Review Chart

	Decision Maker	Applicable Code Section
Type I – Administrative land use decisions made without legal requirement for public comment	Planning, Building and Public Works Director	DMMC 18.20.150 and 18.20.160
Accessory living quarters (ALQ) development permit	Planning, Building and Public Works Director	DMMC 18.55.140
Building height bonus	City Manager	DMMC 18.115.060(2)
Comprehensive signage design plan permit	Planning, Building and Public Works Director	DMMC 18.200.120 through 18.200.140
Lot line adjustment (exempt DMMC 18.20.060(2))	Planning, Building and Public Works Director	Chapter 17.25 DMMC
Sign permit	Planning, Building and Public Works Director	DMMC 18.200.060 and DMMC 18.200.080
Special use sign permit	Planning, Building and Public Works Director	DMMC 18.200.110
Construction permits required under Title 14 DMMC (Buildings and Construction) categorically exempt from SEPA (exempt DMMC 18.20.060(2))	Building Official	Title 14 DMMC
Design review decisions	Planning, Building and Public Works Director	DMMC 18.235.110 and 18.235.120
Determination that action is categorically exempt	SEPA Official	DMMC 16.05.110
Reasonable use exceptions or determinations in environmentally critical areas.	Planning, Building and Public Works Director	Chapter 16.10 DMMC and DMMC 16.10.400
Interpretation of Title 12 DMMC, Streets, Sidewalks, and Public Places, Title 14 DMMC, Buildings and Construction, Title 16 DMMC, Environment, Title 17 DMMC, Subdivisions, and this Title	Planning, Building and Public Works Director or Building Official as applicable	Chapter 12.02 DMMC Chapter 14.02 DMMC Chapter 16.02 DMMC Chapter 17.02 DMMC Chapter 18.50 DMMC

18.20.080A Project Review Chart

	Decision Maker	Applicable Code Section
Off-street parking permit	Planning, Building and Public Works Director	DMMC 18.210.060
Reduction of the minimum retail trade or personal business services requirements for mixed use developments	Planning, Building and Public Works Director	DMMC 18.115.050(9)(b)
Waiver of zoning requirements	Planning, Building and Public Works Director	DMMC 18.35.050
Street vacations and other actions relating to use of public areas or facilities (exempt DMMC 18.20.060(1))	Planning, Building and Public Works Director	Title 12 DMMC
Noise mitigation plan	Planning, Building and Public Works Director	DMMC 18.185.060
Landscaping site plans	Planning, Building and Public Works Director	DMMC 18.195.020(4)
Modification of same	Planning, Building and Public Works Director	DMMC 18.195.420
Temporary homeless encampments	Planning, Building and Public Works Director	DMMC 18.170.080
Type II – Administrative land use decisions made after legally required opportunity for public comment	Planning, Building and Public Works Director	DMMC 18.20.170
Applications for small domestic animals, large domestic animals and bee review	City Manager or City Manager's Designee	Chapter 18.150 DMMC
Short subdivisions, preliminary approval	Planning, Building and Public Works Director	DMMC 17.05.060 through 17.05.090 and 17.05.140 through 17.05.210
Modified short subdivisions	Planning, Building and Public Works Director	DMMC 17.05.060 through 17.05.090 and 17.05.140 through 17.05.210
Alteration or vacation of binding site plan with no more than four lots	Planning, Building and Public Works Director	Chapter 17.20 DMMC
Alteration or vacation of short subdivision without public dedication	Planning, Building and Public Works Director	DMMC 17.20.050(2) and

18.20.080A Project Review Chart

	Decision Maker	Applicable Code Section
		chapter 17.05 DMMC
Binding site plan with no more than four lots	Planning, Building and Public Works Director	DMMC 17.20.050(2) and chapter 17.30 DMMC
Determination of the adequacy of a final environmental impact statement	SEPA Official	DMMC 16.05.150 through 16.05.170 and 16.05.300 through 16.05.320
Determination of nonsignificance (DNS) and mitigated DNS	SEPA Official	DMMC 16.05.140 and 16.05.300 through 16.05.320
Determination of significance (DS) (appeal by LUPA action only)	Planning, Building and Public Works Director	DMMC 16.05.320(5)(d)
Planning, Building and Public Works Director approval, conditional approval, or denial of a project based upon chapter 16.05 DMMC (SEPA rules)	Planning, Building and Public Works Director	DMMC 16.05.300 through 16.05.320
Administrative decision made pursuant to chapter 16.15 DMMC, Flood Hazard Areas	City Manager or the City Manager's designee	DMMC 16.15.170
Townhouse development with no more than four lots	Planning, Building and Public Works Director	DMMC 18.60.050(2) and 17.05.150
Shoreline substantial development permit revisions	Planning, Building and Public Works Director	DMMC 16.20.010
Exemptions from shoreline substantial development permit	Planning, Building and Public Works Director	DMMC 16.20.010
Environmentally critical area development exception	Hearing Examiner	DMMC 16.10.300
Type III – Quasi-judicial and other decisions by the Hearing Examiner made after legally required opportunity for public comment	Hearing Examiner	DMMC 18.20.180
Appeal of an administrative/land use decision	Hearing Examiner	DMMC 18.20.160

18.20.080A Project Review Chart

	Decision Maker	Applicable Code Section
Conditional use permit	Hearing Examiner	Chapter 18.140 DMMC
Hearing Examiner approval, conditional approval or denial of a project based upon chapter 16.05 DMMC, SEPA	Hearing Examiner	Chapter 16.05 DMMC
Modification of parking provisions by Hearing Examiner	Hearing Examiner	DMMC 18.210.070
Variance	Hearing Examiner	DMMC 18.35.070
Abatement of nonconforming uses (exempt DMMC 18.20.060(1))	Hearing Examiner	DMMC 18.15.110
Type IV – Quasi-judicial and other nonlegislative decisions by the City Council made after legally required opportunity for public comment	City Council	DMMC 18.20.190
Zoning map amendments (site specific)	City Council	Chapter 18.30 DMMC
Subdivisions – preliminary plat approval	City Council	DMMC 17.10.130 through 17.10.200
Modified subdivision – preliminary	City Council	DMMC 17.15.060 through 17.15.090
Alteration or vacation of a subdivision – preliminary	City Council	DMMC 17.20.050 and chapter 17.10 DMMC
Alteration or vacation of a short plat with public dedication – preliminary	City Council	DMMC 17.20.050 and chapter 17.05 DMMC
Alteration or vacation of a binding site plan with public dedication – preliminary	City Council	DMMC 17.20.050(1)(b) and chapter 17.10 DMMC

18.20.080A Project Review Chart

	Decision Maker	Applicable Code Section
Alteration of vacation of binding site plan with more than four lots; not involving a public dedication – preliminary	City Council	DMMC 17.20.050(1) and chapter 17.30 DMMC
Approval of business park master plan (exempt DMMC 18.20.060(1))	City Council	DMMC 18.105.050
Binding site plan with more than nine lots, preliminary approval	City Council	DMMC 17.30.050(2) and 17.30.090
Planned unit development, preliminary approval	City Council	Chapter 18.230 DMMC
Townhouse development with more than nine lots	City Council	DMMC 18.50.050(3) and 17.10.130 through 17.10.170
City Council approval, conditional approval or denial of a project based upon chapter 16.05 DMMC	City Council	Chapter 16.05 DMMC
Shoreline substantial development permit with an environmental impact statement	City Council	DMMC 16.20.010
Shoreline conditional use	City Council	DMMC 16.20.010
Shoreline variance	City Council	DMMC 16.20.010
Unclassified use permit	City Council	DMMC 18.20.190
Type V – Quasi-judicial and other nonlegislative decisions by the City Council without requirement for public comment	City Council	DMMC 18.20.200
Final alteration or vacation of binding site plan with public dedication	City Council	DMMC 17.20.050 and 17.20.060
Final alteration or vacation of binding site plan with more than four lots and not involving a public dedication	City Council	DMMC 17.20.050 and 17.20.060
Final alteration or vacation of short subdivision with public dedication	City Council	DMMC 17.20.050 and 17.20.060 and chapter 17.05 DMMC

18.20.080A Project Review Chart

	Decision Maker	Applicable Code Section
Final alteration or vacation of subdivision	City Council	DMMC 17.20.050 and chapter 17.10 DMMC
Final binding site plan with more than four lots	City Council	DMMC 17.30.070
Final modified short subdivision	City Council	DMMC 17.15.090
Final modified subdivision	City Council	DMMC 17.15.090
Final planned unit development	City Council	Chapter 18.230 DMMC
Final townhouse development with more than four lots	City Council	Chapter 18.60 DMMC
Subdivision – final plat	City Council	DMMC 17.10.240 through 17.10.270
Type VI – Legislative decisions made by the City Council made after legally required opportunity for public comment (exempt pursuant to DMMC 18.20.060(1))	City Council	DMMC 18.20.210
Area-wide rezones	City Council	DMMC 18.30.100
Comprehensive Plan adoption or amendments	City Council	DMMC 18.25.050
Textual code amendment of Titles 12 , 14 , 16 and 17 DMMC, Subdivisions, and this Title	Planning, Building and Public Works Director schedules public meeting before the City Council.	Chapter 17.45 DMMC and DMMC 18.30.100

Sec. 3. A new section is added as DMMC 18.170.080 to read as follows:

Temporary homeless encampment use permit. Temporary homeless encampments are allowed pursuant to a temporary homeless encampment use permit, which shall be a Type I land use decision reviewed and issued pursuant to chapter 18.20 DMMC and the following conditions:

(1) An application for a temporary homeless encampment use permit shall include a religious organization as a sponsor or managing agency and must be located on real property owned or controlled by the religious organization. The managing agency shall be responsible for complying with the following conditions:

(a) The managing agency and temporary encampment sponsor shall submit a complete application for a temporary encampment permit at least 75 days before any occupancy by the temporary encampment;

(b) The managing agency shall ensure compliance with Washington State and City codes concerning but not limited to drinking water connections, human waste, solid waste disposal, electrical systems, and fire resistant materials;

(c) The managing agency shall take all reasonable and legal steps to obtain verifiable identification from prospective encampment residents and use the identification to obtain sex offender and warrant checks from the appropriate agency. All requirements by the Des Moines Police Department related to identified sex offenders or prospective residents with warrants shall be met; and

(d) The managing agency shall permit inspections by the City, South King County Fire and Rescue and/or health department to check compliance with the standards for temporary homeless encampments.

(2) Site requirements. All temporary homeless encampments shall comply with the following site requirements:

(a) The encampment shall be located a minimum of forty (40) feet from the property line of abutting properties containing residential uses and twenty (20) feet from commercial properties;

(b) Sight-obscuring fencing shall be required around the perimeter of the temporary homeless encampment unless the Planning, Building and Public Works Director determines

(c) Exterior lighting shall be directed downward and contained within the temporary homeless encampment;

(d) Tents, membrane structures, or canopies in excess of 400 square feet as defined by the International Fire Code, shall require a permit and approval from the fire marshal;

(e) A designated smoking area shall be provided on site and in a location that results in the least impact on neighboring properties;

(f) Garbage and recycling containers shall be provided on site and collected and emptied a minimum of once per week and each site shall be cleared of all debris and litter within five (5) days of when the temporary homeless encampment moves from the site; and

(g) Temporary homeless encampments shall comply with all applicable standards of the Seattle-King County public health department.

(h) Temporary homeless encampments shall not be located within 1,000 (one thousand) feet of an elementary or secondary school.

(3) The maximum number of residents within a temporary homeless encampment is one hundred (100); however, this number may be limited as site conditions dictate and as deemed appropriate by South King County Fire and Rescue and/or the Des Moines Police Department.

(4) Parking:

(a) Parking for a minimum of five (5) vehicles and vehicle maneuvering area shall be provided; and

(b) Parking of vehicles associated with a temporary homeless encampment, and the Temporary Homeless Encampment itself, shall not displace the sponsor's off-street parking in such a way that the sponsor's site no longer meets the minimum required parking of the principal use as required by Chapter 18.210 DMMC or previous approvals, unless an alternative

minimum or required parking of the principal use as required by Chapter 18.210 DMCC or previous approvals, unless an alternative parking plan is approved by the City Manager or the City Manager's designee.

(5) Transportation plan. A transportation plan shall be submitted with the permit application demonstrating:

(a) Reasonable access to methods of communication and services such as groceries, supplies and medical care; and

(b) Access to public transit services and any alternative means of transportation such as private or volunteer shuttle service and reasonable bicycle and pedestrian paths.

(c) The temporary homeless encampment shall be located within one-half (1/2) mile of transit service.

(6) No children under eighteen (18) years of age are allowed in the temporary homeless encampment. If a child under the age of eighteen (18) attempts to stay at the temporary homeless encampment, the managing agency shall immediately contact the Washington State Department of Social and Health Services Child Protective Services.

(7) No animals shall be permitted in encampments except for service animals.

(8) A code of conduct is required to be enforced by the managing agency. The code shall contain the following as a minimum:

(a) No illegal drugs or alcohol.

(b) No weapons.

(c) No violence.

(d) No open flames.

(e) No loitering in the surrounding neighborhood.

(f) No trespassing into private property in the surrounding neighborhood is permitted.

(g) No littering on the temporary encampment site or in the surrounding neighborhood is permitted.

(h) No convicted sex offender shall reside in the temporary encampment.

(i) Quiet hours shall be from 7 p.m. to 7 a.m.

(9) The fire department shall do an initial fire inspection and safety meeting at the inception of the temporary encampment.

(10) Upon determination that there has been a violation of any condition of approval, the code official may give written notice to the permit holder describing the alleged violation. Within five days of the mailing of notice of violation, the permit holder shall show cause why the permit should not be revoked. At the end of the five-day period, the code official shall sustain or revoke the permit. When a temporary encampment permit is revoked, the code official shall notify the permit holder by certified mail of the revocation and the findings upon which revocation is based. Appeals of decisions to revoke a temporary encampment permit will be processed pursuant to Chapter 36.70C RCW.

Sec. 4. A new section is added to chapter 18.170 DMMC to read as follows:

Temporary homeless encampment frequency and duration of temporary use. The City may not grant a temporary homeless encampment use permit to a religious organization or managing agency more frequently than once in every 365-day period. The City may only grant a temporary homeless encampment use permit for a specified period of time, not to exceed 92 days. Only one (1) homeless encampment shall be permitted within the City in a 365-day period.

Sec. 5. A new section is added to chapter 18.170 DMMC to read as follows:

Notice requirements for temporary homeless encampments.

(1) Applicability. The following notice requirements apply to all locations for temporary homeless encampments.

(2) Public meeting. A minimum of fourteen (14) calendar days prior to the anticipated start of the encampment, the sponsor and/or managing agency shall conduct a public informational meeting by providing mailed notice to owners of property within one thousand (1,000) feet of the subject property and residents and tenants adjacent to the subject property. The purpose of the meeting is to provide the surrounding community with information regarding the proposed duration and operation of the temporary homeless encampment, conditions that will likely be placed on the operation of the temporary homeless encampment, requirements of the written code of conduct, and to answer questions regarding the temporary homeless encampment.

(3) A Notice of Application for Temporary Homeless Encampment shall be provided prior to the Planning, Building and Public Works Director's decision. The purpose of the notice is to inform the surrounding community of the application. Due to the administrative and temporary nature of the permit, there is no comment period. The notice shall contain at a minimum the date of application, project location, proposed duration and operation of the temporary homeless encampment, conditions that will likely be placed on the operation of the temporary homeless encampment, requirements of the written code of conduct, and how to get more information (i.e., City website). The Planning, Building and Public Works Department shall distribute this notice as follows:

(a) The notice, or a summary thereof, will be published in the official newspaper of the City at least seven (7) calendar days prior to the Planning, Building and Public Works Director's decision.

(b) Additional Mailed Notice. The requirements for mailed notice of the application set forth in DMMC 18.20.130(5) shall be expanded to include owners of real property within one thousand (1,000) feet of the project site. Prior to the decision of the Director on a Temporary Encampment Permit, the Encampment Managing Agency or Sponsor shall meet and confer with the

administration of any public or private elementary, middle, junior high or high school within one thousand (1,000) feet of the boundaries of the proposed Temporary Encampment site, and shall meet and confer with the operators of any known child care service within one thousand (1,000) feet of the boundaries of the proposed Temporary Encampment site. The Managing Agency or Sponsor and the school administration and/or child care service operator shall make a good faith effort to agree upon any additional conditions that may be appropriate or necessary to address school and/or child care concerns regarding the location of a Temporary Encampment within one thousand (1,000) feet of such a facility. Any such conditions agreed upon between the parties shall be submitted to the Director for consideration for inclusion within the Temporary Encampment Permit. In the event the parties fail to agree on any conditions, either party may provide the Director with a written summary of the parties' discussions, which the Director may consider in evaluating whether the criteria for the Temporary Encampment Permit are met, or the need for additional conditions upon the Temporary Encampment Permit based on the applicable decision criteria.

(c) The notice will be posted on the City's website.

(d) If 1,000 feet includes another jurisdiction, the City shall notify the Chief Executive Officer of that city.

(4) A Notice of Decision for Temporary Homeless Encampment, or summary thereof, shall contain the decision of the Planning, Building and Public Works Director and appeal procedure and be distributed as required for notice of application within four (4) business days after the decision.

Sec. 6. A new section is added to chapter 18.170 DMMC to read as follows:

Option to modify standards for temporary homeless encampments. The applicant may apply for a temporary homeless encampment use permit that applies standards that differ from those in section 3 of this Ordinance. If a modification is proposed, the application will be processed as a Type I land use action pursuant to chapter 18.20 DMMC. In addition to all other permit application requirements, the applicant shall submit a description of the standard to be modified and shall demonstrate how the modification

will result in a safe temporary homeless encampment under the specific circumstances of the application. In considering whether the modification should be granted, the Planning, Building and Public Works Director shall consider the effects on health and safety of residents and the community.

Sec. 7. Codification. Sections 3 through 6 of this Ordinance shall be codified as DMMC 18.170.080 entitled "*Temporary Homeless Encampments.*"

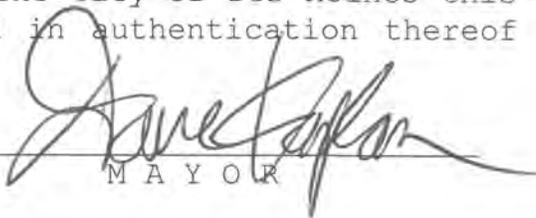
Sec. 8. Severability - Construction.

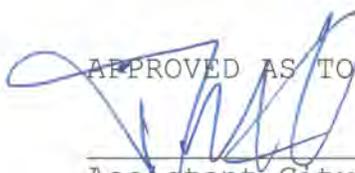
(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

Sec. 9. Effective date. This Ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this 5th day of November, 2015 and signed in authentication thereof this 5th day of November, 2015.


MAYOR


APPROVED AS TO FORM:

Assistant City Attorney

ATTEST:


City Clerk

Published: November 12, 2015

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1628, Adopted November 5, 2015.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates zoning and the regulation of temporary encampments for the homeless, amends DMMC 18.01.050 by adding definitions, amends DMMC 18.20.080A project review chart, and adds and codifies a new section entitled "*Temporary Homeless Encampments.*"

The full text of the Ordinance will be mailed without cost upon request.

Bonnie Wilkins
City Clerk

Published: November 12, 2015