

**ORDINANCE NO. 1534**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON,** relating to the Zoning Code and uses allowed as permitted uses in the Neighborhood Commercial (NC) zone, amending DMMC 18.20.020.

**WHEREAS,** Mr. Alex White owns property located at 23659 Marine View Drive South (site), and

**WHEREAS,** on June 14, 2001 Mr. White filed an application with the City of Des Moines requesting approval of an unclassified use permit to allow mixed use on the site, and

**WHEREAS,** on June 3, 2005 the City Council adopted Resolution No. 932 approving a settlement agreement and the proposed unclassified use permit application, and

**WHEREAS,** terms of the settlement agreement and approved unclassified use permit limited the mixed use development to 4 residential units and 1 commercial unit, and

**WHEREAS,** Mr. White has since developed the site and built all buildings on the subject property consistent with terms of the settlement agreement and the approved unclassified use permit, and

**WHEREAS,** Mr. White made comments to the City Council at its regular meeting on January 12, 2012 that he has been successful in selling all residential units within the development, but has had great difficulty selling the commercial space and requests that the Council consider allowing him to change the use of the already constructed commercial space for use as a residential dwelling unit instead, and

**WHEREAS,** conversion of Mr. White's commercial space to residential will change the use of the site from mixed use to multiple dwelling use, and

**WHEREAS,** the site is zoned NC, Neighborhood Commercial, which allows mixed uses with approval of an unclassified use permit, but does not allow use for multiple dwelling units only, and

**WHEREAS,** allowing Mr. White to convert his existing commercial space to multiple dwelling use will require the City to either change the uses allowed in the code text of the

current NC zone to include multiple dwelling use only or to rezone the subject site to a different zone classification which already allows multiple dwellings as a permitted use, and

**WHEREAS**, the option of changing the zoning text is the preferred process option to fulfill Mr. White's request, because rezoning the subject site is believed to be more complex, time consuming, and potentially objectionable to neighboring single family residential property owners than a code text change to the existing zoning, and

**WHEREAS**, there are only three properties (the subject site, City Hall, and former lower Redondo Grocery property) that are zoned NC in the City of Des Moines and therefore would be affected by a code text change to allow multiple dwelling units as a permitted use, and

**WHEREAS**, all three NC zoned properties and their surroundings are situated such that they could accommodate multiple dwelling use if the individual property owner's chose to develop these properties for that purpose, and

**WHEREAS**, pursuant to DMMC 18.56.080, amendment of the zoning code (Title 18 DMMC) is a legislative (Type VI) land use decision, and

**WHEREAS**, Type VI legislative decisions require Council action at a public hearing, and

**WHEREAS**, notice of the public hearing was given to the public in accordance with law and a public hearing was held on March 8, 2012, and all persons wishing to be heard were heard, and

**WHEREAS**, the textual code amendments proposed by this Ordinance are exempt from the requirements of SEPA pursuant to WAC 197-11-800(19), and

**WHEREAS**, the textual code amendments proposed in this ordinance were provided to the Department of Commerce as required by RCW 36.70A.106, and

**WHEREAS**, the City Council finds that the amendments contained in this ordinance are appropriate and necessary; now therefore,

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

**Sec. 1.** DMMC 18.20.020 and section 1 of Ordinance No. 175 as amended by section 3 of Ordinance No. 445 as amended by section 5 of Ordinance No. 617 as amended by section 3 of Ordinance No. 1237 are each amended to read as follows:

**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 on the antenna system review permit process;

(9) Multiple dwelling units.

**Sec. 2. 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. 3. 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 29th day of March, 2012 and signed in authentication thereof this 29th day of March, 2012.

MAYOR

APPROVED AS TO FORM:

Assistant City Attorney

ATTEST:

City Clerk

Published: April 4, 2012

LEGAL NOTICE  
SUMMARY OF ADOPTED ORDINANCE  
CITY OF DES MOINES

ORDINANCE NO. 1534, Adopted March 29, 2012.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance relates to the Zoning Code and uses allowed as permitted uses in the Neighborhood Commercial (NC) zone, and amends DMMC 18.20.020.

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

Sandy Paul, CMC  
City Clerk

Published: April 4, 2012