

ORDINANCE NO. 1644

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to adult entertainment facilities, amending DMMC 18.160.030 and DMMC 18.52.010B, Commercial Zone Primary Uses Chart and Footnotes 35, 46 and 78, to update and provide consistency in the Zoning Code, and increasing the distance required between adult entertainment facilities from 500 feet to 1,000 feet.

WHEREAS, the Des Moines 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, and

WHEREAS, the City Council finds that adult entertainment, activity, retail or use requires special supervision from the public safety agencies in order to protect and preserve the health, safety, and welfare of the patrons and employees of said businesses as well as the citizens of the City, and

WHEREAS, the City Council finds that concerns about crime and public sexual activity generated and/or occurring within or nearby the adult entertainment, activity, retail, or use are legitimate, substantial, and compelling concerns of the City which demand reasonable regulation, and

WHEREAS, the City Council finds that adult entertainment, activity, retail, or use, 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, and

WHEREAS, there is convincing documented evidence that adult entertainment, activity, retail, or use have a detrimental effect on both the existing businesses around them and the surrounding residential and commercial 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, patron, and employees from the adverse secondary effects of such retail facilities, and

WHEREAS, the City recognizes that adult entertainment, activity, retail, or use, 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, libraries, schools, and other adult entertainment, activity, retail, or use, 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 uses are minimized, and

WHEREAS, this Ordinance 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, activity, retail, or use. The regulations set forth herein are intended to control health, safety, and welfare issues, the decline in neighborhood conditions in and around adult retail uses, and to isolate dangerous and unlawful conduct associated with these facilities, and

WHEREAS, it is not the intent of this Ordinance 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, activity, retail, or use, and

WHEREAS, 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, and

WHEREAS, a public hearing is required for enacting an Ordinance to amend Title 18 DMMC commonly referred to as the Zoning Code, 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 expedited review was granted on December 15, 2015, and

WHEREAS, the City Council set the date for the public hearing on Draft Ordinance No. 15-198 by Resolution No. 1321, fixing the public hearing for February 25, 2016, 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 and public hearing notice were issued and published on January 21, 2016, in the *Seattle Times*, and the appropriate comment period expired on February 5, 2016, and the appeal period concluded on February 15, 2016, and

WHEREAS, a public hearing was held on February 25, 2016, where all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the amendments contained in this Ordinance are appropriate and necessary for the preservation of the public health, safety, and welfare; now therefore,

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

Sec. 1. DMMC 18.160.030 and section 354 of Ordinance No. 1591 are amended to read as follows:

Adult entertainment facilities prohibited in certain areas. Adult entertainment facilities, as defined in this Title, shall only be permitted within the PR-C Zone south of South 216th Street:

(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 one thousand (1,000) feet from the property lines of churches, common schools, day care centers, and public facilities, and one thousand

(1,000) feet from any other adult entertainment or 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 the disqualifying site.

Sec. 2. DMMC 18.52.010B, Commercial Zone Primary Uses Chart and Footnotes 35, 46 and 78, and section 133 of Ordinance No. 1591 as amended by section 12 of Ordinance No. 1601 as amended by section 8 of Ordinance No. 1618-A are each amended to read as follows:

TABLE 18.52.010B

COMMERCIAL ZONE PRIMARY USES

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
Accessory buildings and uses (as described in the applicable zone)	P	P	P	P	P	P	P	P	P
Admin, support services	P/L _[3]		P	P/L _[16]	P/L _[22]		P	P	P
Adult family homes				P	P		P	P	P
Adult entertainment facilities							P/L _[46]		
Amusement and recreational services				P/L _[16]	P/L _[22]				P/L _[68]
Amusement parks	CUP	CUP	CUP	CUP		CUP	CUP	CUP	CUP
Animal or veterinary services			P	P	P	P	P	P	P
Antenna system (one)	P/L _[6]								
Animal grooming	P/L _[3]		P	P	P		P	P	P
Antenna systems (not accessory)	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP
Apparel and accessories stores	P/L _[1]		P	P	P	P	P	P	P

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
Arrangement of passenger transportation	P/L _[3]			P	P		P	P	P
Art galleries	P			P	P		P	P	P
Art, glassware manufacturing			P	P	P				P
Art, ornamental ware				P	P				P
Arts, entertainment, and recreation facilities				P/L _[16]	P/L _[22]		P	P	P
Auction houses or stores				P	P	P/L _[31]	P		P
Automobile, body, paint, interior and/or glass repair				P/L _[18]	P/L _[25]		P/L _[48]		P/L _[70]
Automobile, detail shop				P/L _[18]	P/L _[25]		P/L _[48]		P/L _[70]
Automobile, maintenance and repair				P/L _[18]	P/L _[25]	P	P/L _[46]		P/L _[70]
Automobile, parking	P/L _[5]		P	P/L _[16] (20)	P/L _[22]	P	P	P/L _[54]	P/L _[72]
Automobile, sales						P	P/L _[43]		
Automobile, service stations				P/L _[18]	P/L _[25]	P/L _[36]	P/L _[48]		P/L _[70]
Automobile, trailer sales						P	P		
Automotive equipment, rental and leasing				P	P	P	P	P/L _[53]	P
Bakeries, manufacturing and retail sales	P/L _[11]		P			P		P/L _[55]	P/L _[73]
Ballparks	CUP	CUP	CUP	CUP	CUP	CUP	CUP		CUP
Banks				P	P		P	P	P
Barber, beauty and hairstyling shops	P/L _[3]			P	P		P	P	P
Bed and breakfast facilities				P	P		P	P	P
Boats, building and repairing (less than 48 feet)						P	P		
Boats, repair/sale						P	P		
Boat moorage	P/L _[3]					P/L _[42]			
Botanical and zoological gardens				P	P		P		P
Bookbinding			P			P		P	P
Booster stations	UUP	UUP	UUP	UUP		UUP	UUP	UUP	UUP
Boxing and wrestling arenas	CUP	CUP	CUP	CUP		CUP	CUP	CUP	CUP

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
Building materials and garden equipment supply	P/L ₍₁₎		P	P	P	P/L ₍₂₈₎	P		P
Car washes				P/L ₍₁₈₎	P/L ₍₂₅₎	P			P/L ₍₇₀₎
Carpentry and cabinet shops	P/L ₍₁₎ (2)		P	P	P	P	P		P
Casino hotels and motels				P	P		P	P	P
Cemeteries	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Ceramics, manufacture						P/L ₍₂₉₎			
Columbariums, crematories, mausoleums with permitted cemeteries	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Commercial and industrial machinery and equipment, rental and leasing			P			P	P		
Community care facilities				P	P		P	P	P/L ₍₇₈₎
Community gardens				P	P				P
Community housing services				P/L ₍₈₀₎	P/L ₍₈₀₎				P/L ₍₈₀₎
Confectionery, manufacture			P			P		P/L ₍₅₈₎	P/L ₍₇₃₎
Contractors, general	P/L ₍₃₎		P/L ₍₁₄₎			P	P	P	P
Convention facilities			P	P	P	P		P	P
Correctional institutions			P						
Couriers and messengers	P/L ₍₃₎		P				P	P	P
Data processing, business and record storage	P/L ₍₃₎		P	P	P	P	P	P	P
Day care centers and mini-day care providers	CUP	CUP	CUP	CUP	CUP		CUP	CUP	CUP
Death care services	P/L ₍₃₎		P	P	P	P/L ₍₄₂₎	P		P
Distribution centers, home deliveries			P			P			
Drive-in or drive-through facilities	P			P/L ₍₁₈₎	P/L ₍₂₅₎		P		P/L ₍₇₀₎
Dry cleaning and laundering services	P/L ₍₃₎		P	P	P	P	P	P	P
Educational services		P	P/L ₍₇₎	P	P/L ₍₂₇₎	P/L ₍₃₇₎	P	P	P
Electric power generation, biomass			P/L ₍₁₂₎						

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
Electrical appliances and supplies, retail sales, wholesale trade and repairs						P			
Equipment rental and leasing			P	P/L ₍₁₀₎	P/L ₍₂₂₎	P	P		P/L ₍₈₈₎
Fairgrounds and rodeos	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Family day care providers					P/L ₍₈₀₎		P/L ₍₈₀₎	P/L ₍₈₀₎	P/L ₍₈₀₎
Financial and insurance services			P	P	P		P	P	P
Fish hatcheries and preserves					P				
Fix-it shops			P	P	P	P	P		P
Food, frozen or cold storage lockers			P	P	P	P			P
Food stores	P/L ₍₁₎		P	P	P		P	P	P
Footwear and leather goods repair	P		P	P	P	P	P	P	P
Foreign trade			P/L ₍₁₃₎						
Fraternal organizations/societies		P	P/L ₍₇₎	P	P		P	P	P
Fuel dealers, other							P		
Furniture, home furnishings and equipment, sales	P/L ₍₁₎ [2]		P	P	P	P	P	P	P
Furniture, repair	P/L ₍₂₎ [3]		P	P	P	P	P	P	P
Gambling, amusement, and recreation industries			P/L ₍₇₎	P/L ₍₁₀₎	P/L ₍₂₂₎		P	P	P
Garages, public						P/L ₍₁₀₎			
General merchandise stores	P/L ₍₁₎		P/L ₍₉₎	P/L ₍₁₅₎	P/L ₍₂₁₎		P	P	P
Glass, edging, beveling, silvering			P			P/L ₍₈₁₎			
Glass, stained glass studios	P					P			
Golf courses, with accessory driving ranges, clubhouses and pitch and putt				P	P	CUP	P		P
Golf driving ranges	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Hardware store	P/L ₍₁₎		P	P		P	P	P	P
Health care and social services			P/L ₍₈₁₎	P/L ₍₈₁₎	P		P/L ₍₈₁₎	P/L ₍₈₁₎	P/L ₍₇₄₎ (81)

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
Heating oil dealers							P		
Horticultural and landscaping services			P	P	P				P
Horticultural nurseries	UUP	UUP	UUP	UUP		P	UUP		UUP
Hospitals (except mental and alcoholic)				P	P	P	P	P	P
Hospitals (mental and alcoholic)	CUP	CUP	CUP	CUP		CUP	CUP	CUP	P/L ₍₇₄₎
Hotels				P	P	P/L ₍₄₀₎	P/L ₍₄₇₎	P	P
Information establishments						P	P	P	P
Internet service providers			P				P	P	P
Job printing, newspapers, lithography, and publishing						P		P	
Kennels, commercial			P	P	P		P	P/L ₍₅₇₎	P
Labor camps (transient)	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Laboratories			P	P	P	CUP	P	P	P
Laboratories (incl. medical, dental, or photographic)			P/L	P	P	P	P	P	P
Laundry, industrial			P				P		
Legal services	P/L ₍₃₎		P	P	P	P	P	P	P
Libraries (public)	P			P	P		P	P	P
Light manufacturing, fabrication, and assembly			P/L ₍₆₎						
Limousine/taxi service							P		
Machine shop			P			P/L ₍₃₂₎			
Management of companies and enterprises	P/L ₍₃₎		P	P	P		P	P	P
Manufactured home sales							P		
Marijuana producer/processor, recreational			P/L ₍₇₉₎	P/L ₍₇₉₎		P/L ₍₇₉₎		P/L ₍₇₉₎	P/L ₍₇₉₎
Marijuana retailer, recreational				P/L ₍₇₉₎		P/L ₍₇₉₎		P/L ₍₇₉₎	P/L ₍₇₉₎
Marinas					P/L ₍₂₄₎				
Mixed use	UUP	UUP	UUP	UUP	P/L ₍₂₀₎	UUP	P/L ₍₅₀₎	P/L ₍₅₈₎	
Motels				P	P	P/L ₍₄₀₎	P/L ₍₄₇₎		P

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
Motion picture services	P/L _[3]			P	P		P	P	P
Museums	P		P/L _[7]	P	P		P	P	P
Nursing homes (PR-R-Nursing care facility; IC-Nursing and residential care facility)				P	P		P		
Offices, business and professional	P/L _[3]		P		P/L _[26]	P	P	P	P
Open air theaters	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Parcel service delivery	P/L _[3]		P			P	P/L _[51]		
Parole or probation offices			P	P	P		P		P
Pawnshop			P	P	P	P	P		P
Personal and business services	P/L _[3]		P/L _[7]	P/L _[16]	P/L _[22]		P	P	P/L _[68]
Pet boarding			P	P	P		P	P/L _[69]	P
Pet shop	P/L _[11]			P	P	P/L _[33]	P	P	P
Photocopying and duplicating services	P/L _[1] _[3]		P	P	P		P	P	P
Photo finishing	P/L _[1]		P	P	P	P	P	P	P
Planned unit development	P								
Postal service	P		P	P	P		P		P
Professional, scientific, technical services	P/L _[3]		P	P	P		P	P	P
Professional offices, medical, dental	P/L _[3]		P	P	P		P	P	P
Public administration facilities	P		P	P/L _[17]	P/L _[23]		P/L _[40]	P/L _[60]	P/L _[60]
Public facilities	P		P/L _[10]	P	P		P	P	P
Public utility facilities	P/L _[4]		P/L _[10]		P	P/L _[34]	P/L _[52]	P/L _[61]	
Publishing, telecommunications, Internet service providers, data processing services	P/L _[3]		P	P	P	P	P	P	P
Race tracks, drag strips, motorcycles hills and Go-Kart tracks	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Real estate renting and leasing	P/L _[3]		P	P	P	P	P	P	P

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Recreational facilities – commercial	CUP	CUP	CUP	CUP	CUP	P	CUP		CUP
Recreational vehicles, sales and storage						P	P		
Religious grant writing, civic and professional organizations	P/L ₍₃₎	P	P/L ₍₇₎	P	P	P	P	P	P
Repair services	P/L ₍₂₎₍₃₎		P/L ₍₇₎	P/L ₍₁₆₎₍₁₈₎	P/L ₍₂₂₎₍₂₅₎		P		P/L ₍₆₈₎₍₇₀₎
Repossession services	P/L ₍₃₎		P	P	P				P
Restaurants	P		P/L ₍₆₎	P	P	P	P	P	P
Retail services and trade	P/L ₍₁₎		P/L ₍₇₎	P/L ₍₁₅₎₍₁₆₎	P/L ₍₂₁₎	P	P/L ₍₄₃₎	P	P/L ₍₁₇₎
Retirement housing		P		P	P		P	P	
Reupholster	P		P	P/L ₍₁₉₎	P	P	P	P	P/L ₍₇₎₍₁₎
Saws and filing shops			P			P			
Sewage treatment plants	UUP	UUP	UUP	UUP		UUP	UUP		UUP
Signs, manufacturing						P			
Self-storage/mini-warehouse leasing			P				P/L ₍₄₄₎	P/L ₍₆₂₎	
Services to buildings and dwellings	P/L ₍₃₎		P	P	P		P		P
Services, miscellaneous	P/L ₍₃₎		P/L ₍₇₎	P/L ₍₁₆₎₍₁₈₎	P/L ₍₂₂₎		P/L ₍₄₅₎₍₄₈₎	P/L ₍₆₃₎	P/L ₍₆₉₎₍₇₀₎
Spectator sports	CUP		CUP	P	P		P		P
Stadiums	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Supermarkets	P/L ₍₁₎		P	P	P		P	P	P
Taverns and cocktail lounges	P/L ₍₁₎		P	P	P	P/L ₍₃₈₎	P	P/L ₍₆₄₎	P/L ₍₇₅₎
Telecommunication facilities	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP
Telephone exchanges						P			
Tire sales and service	P/L ₍₃₎						P		
Theaters				P	P	P	P	P/L ₍₆₅₎	P/L ₍₇₆₎
Towing operations						UUP			
Transportation and wholesale trade			P/L ₍₁₁₎						
Water transportation					CUP				

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Welding repair	P/L _{[2][3]} [82]		P	P/L _[16] [82]	P/L _[82]	P	P		P/L _[68] [82]
Wholesale business			P			P		P/L _[66]	P/L _[77]
Wholesale trade and distribution of groceries				CUP					CUP

35. Reserved.

46. Arts, Entertainment, and Recreation. This regulation applies to all parts of Table 18.52.010B that have a [46]. Adult entertainment facilities are only permitted within the PR-C Zone south of South 216th Street and are prohibited within one thousand (1,000) feet of the property lines of churches, common schools, day care centers, and public facilities, and within one thousand (1,000) feet of any other adult entertainment facilities. Adult entertainment facilities are subject to the additional standards of chapters 5.48 and 18.160 DMMC.

78. Reserved.

Sec. 3. 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.

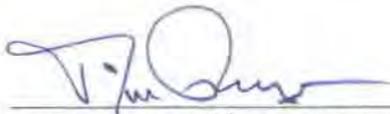
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Sec. 4. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its final passage by the Des Moines City Council in accordance with law.

PASSED BY the City Council of the City of Des Moines this 25th day of February, 2015 and signed in authentication thereof this 25th day of February, 2015.


M A Y O R

APPROVED AS TO FORM:



Assistant City Attorney

ATTEST:

City Clerk

Effective Date: March 26, 2016

Published: March 1, 2016

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1644, Adopted February 25, 2016.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to adult entertainment facilities, amends DMMC 18.160.030 and DMMC 18.52.010B, Commercial Zone Primary Uses Chart and Footnotes 35, 46 and 78, to update and provide consistency in the Zoning Code, and increases the distance required between adult entertainment facilities from 500 feet to 1,000 feet.

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

Bonnie Wilkins
City Clerk

Published: March 1, 2016