

ORDINANCE NO. 1671

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to low impact development stormwater regulations for site development as required by federal Clean Water Act and amending DMMC 11.08.060, 11.08.070, and 11.12.010; DMMC 12.01.050, 12.05.250, 12.15.050, and 12.20.080; DMMC 14.05.120, 14.20.030, and 14.20.080; DMMC 16.05.310 and 16.10.090; DMMC 17.35.130, and 17.35.190; and DMMC 18.01.050 and 18.195.200.

WHEREAS, the Federal Clean Water Act sets a national goal to "restore and maintain the chemical, physical, and biological integrity of the nation's water" and prohibits the discharge of pollutants from any point source, and

WHEREAS, the U.S. Environmental Protection Agency delegates administration of the National Pollutant Discharge Elimination System (NPDES) Permit to the state Department of Ecology under the federal Clean Water Act, and

WHEREAS, the Washington Department of Ecology, as authorized by chapter 90.48 RCW (Washington State Water Pollution Control Act), also takes action through the Phase II Permit to control impacts of stormwater discharges to all waters of Washington State, including ground waters, unless the discharges are authorized by another regulatory program, and

WHEREAS, the Phase II Permit requires permittees to "review, revise and make effective their local development-related codes, rules, standards, or other enforceable documents to incorporate and require Low Impact Development (LID) principles and LID BMPs" no later than December 31, 2016, and

WHEREAS, the intent of that review "shall be to make LID the preferred and commonly-used approach to site development", and

WHEREAS, the City of Des Moines has adopted the 2016 King County Surface Water Design Manual that is consistent with the Department of Ecology's 2012 Stormwater Management Manual for Western Washington, as amended in December 2014, 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, the textual code amendments proposed in this Ordinance were provided to the Department of Commerce as required by RCW 36.70A.106, and

WHEREAS, an expedited review was granted by the Washington State Department of Commerce on November 29, 2016, and

WHEREAS, the City Council set the date for the public hearing on Draft Ordinance No. 16-173 by Resolution No. 1350, fixing the public hearing for January 5, 2017, and

WHEREAS, notice of the public hearing was issued on December 6, 2016 in accordance with the DMMC, and

WHEREAS, a public hearing was held on January 5, 2017, 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 general welfare; now therefore,

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

Sec. 1. DMMC 11.08.060 and section 1 of Ordinance No. 1593 are amended to read as follows:

Stormwater Manuals - Adopted by reference.

(1) The King County Stormwater Pollution Prevention Manual is adopted by reference pursuant to RCW 35A.12.140 as though fully set forth in this chapter, as presently constituted or as it may be subsequently amended. Not less than one copy of this manual, suitably marked to indicate amendments and additions, is filed in the office of the Des Moines City Clerk for public inspection.

(2) The King County Surface Water Design Manual is adopted by reference pursuant to RCW 35.21.180 as though fully set forth in this chapter, as presently constituted or as it may be

subsequently amended. Not less than one copy of this manual, suitably marked to indicate amendments and additions, is filed in the office of the Des Moines City Clerk for public inspection.

Sec. 2. DMMC 11.08.070 and section 2 of Ordinance No. 1593 are amended to read as follows:

(1) Purpose. The purpose of this chapter is to supplement the King County Surface Water Design Manual, adopted by reference in DMMC 16.10.350, as the City storm water standards.

(2) Soil Quality Preservation. Reference 4-A of the King County Surface Water Design Manual as previously adopted in DMMC 16.10.350 requires that any areas that have been cleared and graded shall have the soil moisture-holding capacity restored to the original undisturbed soil condition to the maximum extent practicable. This reference shall be applicable to the standards of performance for land grading under DMMC 14.20.150(3).

(3) Drainage Review. A person who clears, grades or otherwise disturbs a site shall provide erosion and sediment control that prevents, to the maximum extent practicable, the transport of sediment from the site to drainage facilities, water resources, and adjacent properties. Erosion and sediment controls shall be applied as specified by the erosion and sediment control measures and performance criteria in the King County Surface Water Design Manual. Drainage review will be made for erosion and sedimentation control for all land filling, clearing and grading permits required under chapter 14.20 DMMC.

(4) Storm Water Discharges to Wetlands.

(a) Applicability. The requirements below apply only to projects whose storm water discharges into a wetland, either directly or indirectly through a conveyance system

using the thresholds as applied by the King County Surface Water Design Manual.

(b) Discharges to wetlands shall maintain the hydrologic conditions, hydrophytic vegetation, and substrate characteristics necessary to support existing and designated uses. The hydrologic analysis shall use the existing land cover condition to determine the existing hydrologic conditions unless directed otherwise by a regulatory agency with jurisdiction. A wetland can be considered for hydrologic modification and/or storm water treatment in accordance with Guide Sheets 1B and 2B in Appendix I-D of the Department of Ecology Stormwater Management Manual for Western Washington. Guide Sheets 1B and 2B of Appendix I-D of the Department of Ecology Stormwater Management Manual for Western Washington are adopted by reference in subsection (6) of this section and are for wet-land protection in accordance to this chapter. (6) Department of Ecology Stormwater Management Manual for Western Washington Guide Sheets 1B and 2B - Adopted by reference. (a) The Department of Ecology Stormwater Management Manual for Western Washington Guide Sheets 1B and 2B are adopted by reference pursuant to RCW 35A.12.140 as though fully set forth in this chapter, and as presently constituted or as may be subsequently amended. (b) Not less than one copy of each such regulation as written, 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.

(5) Department of Ecology Stormwater Management Manual for Western Washington Guide Sheets 1B and 2B - Adopted by reference.

(a) The Department of Ecology Stormwater Management Manual for Western Washington (2005) Guide Sheets 1B and 2B are adopted by reference pursuant to RCW 35A.12.140 as though fully

set forth in this chapter, and as presently constituted or as may be subsequently amended.

(b) Not less than one copy of each such regulation as written, 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.

Sec. 3. DMMC 11.12.010 and section 1 of Ordinance No. 860 as amended by section 1 of Ordinance No. 1000 as amended by section 2 of Ordinance No. 1211 as amended by section 1 of Ordinance No. 1246 as amended by section 3 of Ordinance No. 1574 are amended to read as follows:

Definitions. 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.

"Commercial property" means: (a) all property in the City, private or public, used for a purpose other than single-family, multifamily, or nonprofit uses; and (b) for the purposes of this chapter, "mixed uses" as defined in the zoning code of the City and nonprofit homes for the aging as that expression is used in chapter 84.36 RCW.

"Development permit charge" means a one-time payment made at the time of development or redevelopment of a property to compensate the City for the costs previously incurred by the City in providing the surface water system serving the property at the time of development.

"Developed property" means a property that has been changed from the natural state, resulting in 500 square feet or more of impervious area occurring on the property.

"Development permit" means, for the purposes of this chapter, a required permit leading to a project that will result in 500 square feet or more of new

impervious area on previously undeveloped or developed property.

"Disabled person" means a person who has been granted special parking privileges for disabled persons under RCW 46.16.381 as presently constituted or as may be subsequently amended.

"Equivalent billing unit (EBU)" means a measure of the impact of commercial/multifamily properties on the surface water system. It is equal to each 3,450 square feet of impervious area that has been determined to be the average amount of impervious area on single-family properties in the City.

"Impervious surface" or "area" means a hard surface area that either prevents or retards the entry of water into the soil mantle as it entered under natural conditions prior to development, or that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots, storage areas, areas which are paved, graveled or made of packed or oiled earthen materials, or other surfaces which similarly impede the natural infiltration of surface and storm water. For the purposes of applying impervious surface thresholds and exemptions contained in this surface water design manual, permeable pavement, vegetated roofs, and pervious surfaces with underdrains designed to collect stormwater runoff are considered impervious surface while open, uncovered retention/detention facilities are not. However, for the purposes of computing runoff, uncovered flow control or water quality facilities shall be modeled as impervious surfaces as specified in the surface water design manual.

"Multifamily property" means all property zoned and/or used for purposes of multifamily housing. For the purposes of this chapter, trailer parks are

considered multi-family property, and "mixed uses" are not considered multifamily property.

"Nonprofit property" means property upon which a facility exists that is owned and operated by a governmental agency or by an organization that has been granted nonprofit status under the rules of the Internal Revenue Code of the United States.

"Nonprofit residential property" means multifamily residential developments or nonprofit homes for the aging, owned and operated by a governmental agency or by an organization that has been granted nonprofit status under the rules of the Internal Revenue Code of the United States.

"Permeable pavement" means pervious concrete, porous asphalt, permeable pavers, or other forms of pervious or porous paving material intended to allow passage of water through the pavement section. Permeable pavement includes an aggregate base or natural soil base that provides structural support and acts as a stormwater reservoir. Surfaces referred to as "paved" shall include those covered by permeable pavement.

"Private streets" means tracts of land, not publicly owned, that are generally open to the public in the same manner as public rights-of-way and that serve residential developments, but shall not include driveways or paved surfaces providing vehicle access within a multifamily or commercial development.

"Rate structure study" means the rate study identified in DMMC 11.12.007.

"Single-family unit" means those properties on which one dwelling unit is established, and that unit is used for dwelling purposes and not commercial activity, except for approved home occupations.

"Single-family unit" also means an individually owned dwelling unit in planned unit developments

(hereinafter "PUD" or "PUDs"), except for condominiums therein.

"Surface water system" means the surface water utility system of the City.

Sec. 4. DMMC 12.01.050 (part) (definitions of "Nonconforming paved street surface", "Street system improvements," and "Surface water drainage facilities") and section 5 of Ordinance No 1578 are each amended to read as follows:

Definitions.

....

"Nonconforming paved street surface" means asphaltic concrete, cement concrete, or permeable pavement street surface (as defined in DMMC 11.12.010) that does not conform with the current "City of Des Moines Street Development Standards," but that the Public Works Director finds to be adequate for projected vehicular traffic.

....

"Street system improvements" include a half street section of street pavement (including appropriate subpaving preparation), storm water facilities, sidewalks where required, curbs and gutters if used, street lighting, right-of-way landscaping (including street trees where required), and other similar improvements as required by the "City of Des Moines Street Development Standards."

....

"Storm water facility" is as defined in Title 11 DMMC.

....

Sec. 5. DMMC 12.05.250 and section 40 of Ordinance No. 1578 are amended to read as follows:

Duty to maintain clean rights-of-way. No person shall willfully or negligently cause or allow dirt, mud, rocks, vegetation, grease, oil, or other foreign material or substance to be deposited, stored, abandoned, discharged, or spread on a public street, alley, sidewalk, walkway, trail, shoulder, or storm water facility.

Sec. 6. DMMC 12.15.050 and section 58 of Ordinance No. 1578 are amended to read as follows:

Street development standards.

(1) Streets and sidewalks in the City shall be constructed in accordance with the provisions of a document entitled "City of Des Moines Street Development Standards." The Public Works Director shall prepare and as necessary shall update the City of Des Moines Street Development Standards for compliance with laws, regulations and standard engineering practices.

(2) Until such a time that the City has the necessary equipment and properly trained staff that is required for the maintenance of pervious pavement; pervious pavement shall not be used within travel lanes or shoulders of public streets and roads unless otherwise approved by the Public Works Director.

Sec. 7. DMMC 12.20.080 and section 67 of Ordinance No. 1578 are amended to read as follows:

Development sites fronting paved street surface. If the development site fronts a paved street surface, the developer shall construct street system improvements along the right-of-way frontage of the development site in accordance with this section.

(1) The developer shall construct storm water facilities.

(2) The developer shall construct sidewalks if the development site fronts a sidewalk route.

(3) The developer shall construct curb, gutter, and right-of-way landscaping.

(4) If the developer is required to construct either curb, gutter, and sidewalk or solely curb and gutter, the developer is required to construct such street pavement as is necessary to provide continuity between the sidewalk, curb, and gutter or curb and gutter and the paved street surface.

Sec. 8. DMMC 14.05.120(4) and section 32 of Ordinance No. 1581 are amended to read as follows:

....

(4) The IPMC shall read as follows: All premises and exterior property shall be maintained free from weeds or plant growth in excess of twelve (12") inches. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs, provided; however, this term shall not include cultivated flowers, gardens, or vegetation within storm water facilities.

....

Sec. 9. DMMC 14.20.030(1)(g) and section 55 of Ordinance No. 1581 as amended by section 14 of Ordinance 1611 are amended to read as follows:

....

(g) To acknowledge that trees and ground cover reduce air pollution by producing pure oxygen from carbon dioxide; and reduce stormwater runoff by intercepting, evapotranspiring, and retaining rainwater in the soils surrounding their root systems;

....

Sec. 10. DMMC 14.20.080(2)(d) and section 60 of Ordinance No. 1581 are amended to read as follows:

....

(d) The location of all existing storm water facilities, natural and manmade, which transport surface water onto the site, into site soils through infiltration, across the site, or from the site;

....

Sec. 11. DMMC 16.05.310(4)(d)(xvii) and section 42 of Ordinance No. 1583 as amended by section 2 of Ordinance 1649 are amended to read as follows:

....

(4) The City designates and adopts by reference the following policies as the basis for the City's exercise of authority pursuant to this section:

...

(d) The City formally designates the following regulations, plans, studies, reports or codes as possible bases for the exercise of authority pursuant to the State Environmental Policy Act of 1971 as amended:

...

(xvii) King County Stormwater Pollution Control Manual, Best Management Practices for Businesses;

....

Sec. 12. DMMC 16.10.090 and section 57 of Ordinance No 1583 are amended to read as follows:

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 which is adopted by this provision and implemented herein as set forth in DMMC 16.10.050, that result in the least amount of impact to the critical areas. Best management practices shall be used for tree, soil, 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.

Sec. 13. DMMC 17.35.130 and section 108 of Ordinance No. 1585 are amended to read as follows:

Utilities and related improvements - Surface water.

(1) General. The subdivision shall be served by a permanent storm water facility designed to accommodate runoff from all land within the subdivision and collect, convey, treat, detain, or infiltrate any runoff from the subdivision in accordance with the surface water management program requirements of Titles 11, 14, 16, and 18 DMMC.

(2) Tracts required. All publicly owned surface water detention and above-ground conveyance improvements shall be located in separate tracts which provide for surface water functions. The area dedicated under this section shall become the property of the City, which shall thereafter assume all maintenance and other ownership responsibilities.

(3) Lot area. The area of surface water tracts shall not be included in the compilation of lot area for any lot.

Sec. 14. DMMC 17.35.190 and section 114 of Ordinance No. 1585 as amended by section 1 of Ordinance 1606 are amended to read as follows:

(1) General. The proposed subdivision shall demonstrate sensitivity to the natural features of the property including, but not limited to, topography, streams, lakes, wetlands, habitat, soils and other geologic features, and vegetation. Any division of land shall be designed to preserve and enhance as many of these valuable features as possible. In addition to the specific provisions of this chapter, the subdivision shall comply with all applicable provisions of Titles 11, 14, 16, and 18 DMMC and other specific requirements regarding development restrictions due to natural features.

(2) Tracts required. All wetlands, streams, and required buffers, pursuant to chapter 16.10 DMMC, shall be located in separate tracts which limit development activity. The area dedicated under this section shall become the property of the City, or any political subdivision designated by the City, and the City or the political subdivision shall thereafter assume all maintenance and other ownership responsibilities.

(3) Lot area. The area of the open space tracts shall not be included in the computation of lot area for any lot area.

Sec. 15. DMMC 18.01.050 (parts) and section 5 of Ordinance No. 1591 as amended by section 1 of Ordinance No. 1628 as amended by section 1 of Ordinance No. 1655 are amended to read as follows:

...

"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, stormwater management, water supply, electric power, gas, and transportation for persons and freight.

....

"Public utility facilities" means a building, complex, or installation 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, stormwater management, water supply, electric power, gas, sewer, or transportation.

....

"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, but may contain storm water facilities.

....

Sec. 16. DMMC 18.195.200 and section 431 of Ordinance No 1591 are amended to read as follows:

Curbing. In order to protect the landscaping materials planted and to ensure proper growth, all planter areas shall be separated from parking areas and streets by vertical curbing. Curbing shall be continuous Portland cement concrete; provided, however that Portland cement concrete with vertical curb cuts are allowed for drainage into low impact

development storm water facilities; or as approved by the Public Works Director.

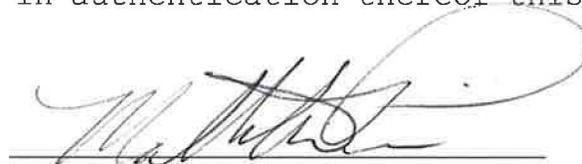
Sec. 17. Severability - Construction.

(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. 18. 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 to law.

PASSED BY the City Council of the City of Des Moines this 5th day of January, 2017 and signed in authentication thereof this 5th day of January, 2017.


MAYOR

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

Published: January 10, 2017

Effective Date: February 4, 2017

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1671, Adopted January 5, 2017.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to low impact development stormwater regulations for site development as required by federal Clean Water Act and amends DMMC 11.08.060, 11.08.070, and 11.12.010; DMMC 12.01.050, 12.05.250, 12.15.050, and 12.20.080; DMMC 14.05.120, 14.20.030, and 14.20.080; DMMC 16.05.310 and 16.10.090; DMMC 17.35.130, and 17.35.190; and DMMC 18.01.050 and 18.195.200.

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

Bonnie Wilkins, CMC
City Clerk

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