

ORDINANCE NO. 1688

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to categorical exemptions for minor new construction under the State Environmental Policy Act (SEPA), amending Des Moines Municipal Code (DMMC) 16.05.040, DMMC 16.05.070, DMMC 16.05.330, DMMC 16.05.340 and DMMC 16.05.350, and finding that the revised procedures are consistent with chapter 197-11 WAC.

WHEREAS, the Washington State Environmental Policy Act (SEPA) was adopted in 1971, which provides a way to identify and mitigate possible environmental impacts that may result from approval of private development proposals, and

WHEREAS, the amendments to the SEPA rules set forth in WAC 197-11-800 include provisions allowing local governments to adopt increases to the thresholds for categorically exempt actions, and

WHEREAS, the requirements for environmental analysis, protection, and mitigation for impacts to elements of the environment listed in WAC 197-11-444 have been adequately addressed in specific adopted development regulations and applicable federal and state regulations for exempted development as set forth in Attachment 1 hereto, and

WHEREAS, applicable federal and state regulations and specific City development regulations, including chapter 18.215 DMMC, provide adequate protections for cultural and historic resources for exempted development in accordance with WAC 197-11-800(1)(c)(iv), and

WHEREAS, chapter 16.10 DMMC containing the City's critical areas regulations, adequately addresses impacts to critical areas for exempted development, and

WHEREAS, project-level comment opportunities for the public, affected tribes, and agencies are described in chapter 18.20 DMMC, and

WHEREAS, the changes proposed by this Ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (SEPA), and the responsible official has determined that this Ordinance is exempt from threshold determination and EIS requirements under WAC 197-11-800(19), and

WHEREAS, the benefits of such a change and other considerations were discussed with the City Council as a noticed agenda item at its May 11, 2017 meeting, and

WHEREAS, the City Council directed City staff to prepare an ordinance for its consideration, and

WHEREAS, WAC 197-11-800, adopted by reference, has been filed in the office of the City Clerk for examination by the public during the time this Ordinance has been under consideration by the Council prior to adoption as required by RCW 35A.12.140, and

WHEREAS, a 60-day comment period for the proposed amendments was provided to the Washington State Departments of Ecology and Commerce, affected tribes, agencies with expertise, and the public, pursuant to WAC 197-11-800 (1)(c)(iii), and

WHEREAS, the City Council set the date for the public hearing on Draft Ordinance No. 17-068 by Resolution No. 1368, fixing the public hearing for October 12, 2017, and

WHEREAS, a public hearing was held on October 12, 2017, where all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the Title 16 DMMC amendments contained in this Ordinance comply with the requirements of WAC 197-11-800; now therefore,

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

Sec. 1. DMMC 16.05.040 and section 15 of Ordinance No. 1583 shall each be amended to read as follows:

Authority. The City adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120 and the SEPA rules, WAC 197-11-904. This chapter contains this City's SEPA procedures and policies. The SEPA rules, chapter 197-11 WAC, and chapter 43.21C RCW, must be used in conjunction with this chapter.

Sec. 2. DMMC 16.05.070 and section 18 of Ordinance No. 1583 shall each be amended to read as follows:

Designation of responsible official.

(1) For those proposals for which the City is the lead agency, the responsible official shall be the Community Development Director.

(2) For all proposals for which the City is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" in accordance with chapter 197-11 WAC.

(3) The City shall retain all documents required by the SEPA rules and make them available in accordance with chapter 42.56 RCW. [Ord. 1583 § 18, 2013.]

Sec. 3. DMMC 16.05.330 and section 44 of Ordinance No. 1583 shall each be amended to read as follows:

Categorical exemptions - Adoption by reference.

(1) The City adopts by reference the following rules for categorical exemptions, as supplemented in this chapter:

(a) WAC 197-11-800, Categorical exemptions; except that the following flexible thresholds specified in WAC 197-11-800(1)(b) shall be adopted by the City as provided for under WAC 197-11-800(1)(c) and (d):

<u>Project Types</u>	
Single Family Residential	30 units or less
Multifamily Residential	30 units or less
Barn, loafing shed, farm equipment storage, produce storage or packing structure	20,000 square feet or less

Office, school, commercial, recreational, service, storage building, parking facilities	12,000 square feet and 50 parking spaces or less
Fill or excavation	500 cubic yards or less

(b) WAC 197-11-880, Emergencies.

(c) WAC 197-11-890, Petitioning DOE to change exemptions.

(2) The City adopts by reference the categorical exemption for electrical vehicle charging and battery exchange stations established by RCW 43.21C.410.

Sec. 4. DMMC 16.05.340 and section 45 of Ordinance No. 1583 shall each be amended to read as follows:

Agency compliance - Rules. DMMC 16.05.350 through 16.05.370 contain rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The City adopts by reference the sections contained in WAC 197-11-900 through 197-11-928.

Sec. 5. DMMC 16.05.350 and section 46 of Ordinance No. 1583 each be amended to read as follows:

Environmentally critical areas and areas of special flood hazard. The scope of environmental review related to impacts to critical areas shall be limited to:

(1) Documenting whether the proposal is consistent with the requirements of chapter 16.10 DMMC, and

(2) Evaluating potentially significant impacts on the environmentally critical area not adequately addressed by Growth Management Act (GMA) planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and with other applicable environmental review laws.

Sec. 6. 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. 7. Effective date. This Ordinance shall take effect and be in full force five (5) days after its final approval by the Des Moines City Council in accordance with law.

PASSED BY the City Council of the City of Des Moines this 12th day of October and signed in authentication thereof this 12th day of October, 2017.


M A Y O R

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

Published: October 17, 2017

ATTACHMENT 1 – ORDINANCE NO. 1688

SEPA Authority by Element of the Environment (WAC 197-11-444)	How Addressed by Other Codes/Rules
Earth	Chapter 14.20 DMMC – Land Filling, Clearing and Grading Code; Chapter 11.08 DMMC – Surface Water Management Program; Chapter 11.20 DMMC – National Pollution Discharge Elimination System (NPDES); Chapter 16.10 DMMC – Environmentally Critical Areas; Title 18 DMMC - Zoning
Air	United States Environmental Protection Agency (EPA); Washington State Department of Ecology, Chapter 173-400 WAC – General Regulations for Air Pollution Sources; Puget Sound Clean Air Authority
Water	Chapter 11.08 DMMC – Surface Water Management Program; Chapter 11.20 DMMC – National Pollution Discharge Elimination System (NPDES); Chapter 16.10 DMMC – Environmentally Critical Areas; Chapter 16.20 DMMC – Shoreline Master Program State Hydraulic Project Approvals; WAC 173-201A – Water Quality Standards for Surface Waters of the State of Washington; WAC 173-200 – Water Quality Standards for Ground Waters of the State of Washington
Plants and Animals	Chapter 16.10 DMMC – Environmentally Critical Areas; Chapter 17.35 DMMC – Layout and Design of Subdivisions and Similar Requirements; Chapter 18.195 DMMC – Landscaping and Screening; Chapter 16.20 DMMC – Shoreline Master Program Federal and State Endangered Species Regulations in 16 USC §1531 et seq. and Chapter 77.12 RCW
Environmental Health	Chapter 7.16 DMMC – Maximum Environmental Noise Levels Federal, state, and regional regulations, as well as local Fire and Building Codes are the primary means of mitigating risks associated with hazardous and toxic materials

Land and Shoreline Use	Chapter 16.10 DMMC – Environmentally Critical Areas; Title 18 DMMC – Zoning; Chapter 16.20 DMMC – Shoreline Master Program; Title 17 DMMC - Subdivisions
Housing	Title 18 DMMC - Zoning and development standards provide for a broad range of housing types in the City and zone for a variety of densities
Aesthetics	Chapter 18.235 DMMC – Design Review; Pacific Ridge Neighborhood Design Guidelines; Marina District Design Guidelines;
Light and Glare	Title 18 DMMC – Zoning; Chapter 18.235 DMMC – Design Review; Pacific Ridge Neighborhood Design Guidelines; Marina District Design Guidelines
Recreation	Title 17 DMMC – Subdivisions; Chapter 16.20 DMMC – Shoreline Master Program; Chapter 18.230 DMMC – Planned Unit Developments; Chapter 18.155 DMMC – Multifamily Recreation Areas; Parks, Recreation, and Senior Services 2016 Master Plan
Historic and Cultural Preservation	Chapter 18.215 DMMC - Protection of Historic and Archeological Resources Federal and State regulations that address the protection of cultural and archeological resources include RCW 27.34, 27.53 & 27.44; and WAC 25.48
Transportation	Title 12 DMMC – Streets, Sidewalks, and Public Places, including Chapter 12.15 DMMC – Street Development Standards, Chapter 12.40 DMMC – Transportation Impact Fees, Chapter 12.70 DMMC – Commute Trip Reduction
Public Services and Utilities	Chapter 14.10 DMMC – Fire Code, Additional Requirements and Amendments; Title 11 DMMC – Utilities; Chapter 17.35 DMMC – Layout and Design of Subdivisions and Similar Requirements; Chapter 7.08 DMMC – Solid Waste Disposal and Collection

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1688, Adopted October 12, 2017.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to categorical exemptions for minor new construction under the State Environmental Policy Act (SEPA), amends Des Moines Municipal Code (DMMC) 16.05.040, DMMC 16.05.070, DMMC 16.05.330, DMMC 16.05.340 and DMMC 16.05.350, and finds that the revised procedures are consistent with chapter 197-11 WAC.

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

Bonnie Wilkins, CMC
City Clerk

Published: October 17, 2017