

**ORDINANCE NO. 1694**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** relating to the Environment Code, establishing an off-site mitigation and fees paid in lieu program in chapter 16.25 DMMC, and establishing an associated urban forestry fund in chapter 3.51 DMMC.

**WHEREAS**, the City Council acting through its standing committees directed City staff to prepare an ordinance for its consideration that minimizes the impact of the acquisition of private property for the Federal Way Link Extension (FWLE), a regional essential public transportation facility, while helping to facilitate the project, engage the Pacific Ridge Neighborhood and minimize project costs, and

**WHEREAS**, the Des Moines Municipal Code (DMMC) requires a twenty-five-foot landscape buffer and a five-foot berm for the portions of the FWLE adjacent to freeways, and

**WHEREAS**, a guideway edge landscape buffer otherwise satisfactory to the City may not provide adequate landscape space on site to accommodate all the replacement trees required by the DMMC without increasing the amount of right of way to be acquired from abutting property owners and increasing project costs, and

**WHEREAS**, the City Council notes that Pacific Ridge is the most heavily impacted neighborhood along the entire FWLE project in terms of private property acquisitions and desires to minimize to the extent possible the impacts of right of way acquisitions on single and multi-family properties, and

**WHEREAS**, the City Council desires that the FWLE design represent the highest possible quality of urban and landscape design as validated by affected property owners and the Pacific Ridge Neighborhood, that it is a strong, complementary and integrating amenity of the Pacific Ridge Neighborhood, and that the landscape be tall and dense while incorporating Crime Prevention Through Environmental Design (CPTED) principles and features, and

**WHEREAS**, each of the 11 residential parcels acquired in whole or in part along the Des Moines portion of the FWLE are uniquely impacted by the right of way acquisition and design requiring administrative flexibility in the application of the DMMC and design of the FWLE, and

**WHEREAS**, many parts of the urban forest in Des Moines are in poor health because of age, disease or invasive plants requiring increasing care and maintenance reforestation, and

**WHEREAS**, the City lacks adequate resources to address the needs of its urban forest areas and the City Council desires to establish ways to create additional resources to preserve, plant and maintain trees within the City including off-site mitigation and fees paid in lieu of on-site work when it is not feasible or desirable to reasonably meet the requirements of the DMMC, and

**WHEREAS**, at the May 18, 2017 City Council Public Safety and Transportation Committee and the June 8, 2017 Finance and Economic Development Committee, staff discussed how the City's current development regulations would affect the acquisition of private property and property remaining after the acquisitions, and

**WHEREAS**, on August 7, 2017, August 14, 2017 and September 6, 2017, public or homeowner association meetings were held where staff discussed how the City's current development regulations would affect the acquisition of private property and property remaining after the acquisitions, and

**WHEREAS**, at the August 7, 2017 and August 14, 2017, public meetings, those in attendance were generally in favor of the proposed changes in this Ordinance if it provided for input by the property owners impacted by the acquisition and aesthetically pleasing landscaping, and

**WHEREAS**, 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 by the responsible official, and the appropriate comment period has expired, and

**WHEREAS**, the City Council set the date for the public hearing by Resolution No. 1371, fixing the public hearing for December 7, 2017, and

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

**WHEREAS**, notice of the public hearing was issued on November 15, 2017 in accordance with the DMMC, and

**WHEREAS**, a public hearing was held on December 7, 2017 where all persons wishing to be heard were heard; now therefore

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

**Sec. 1.** A new section is added to chapter 16.25 DMMC to read as follows:

**16.25.085. Off-site mitigation and fees paid in lieu.**  
Where an applicant cannot provide for the minimum required replacement trees on site, off-site mitigation for private developments or a fee-in-lieu payment into the City's urban forestry fund for public developments may be approved by the Community Development Director.

(1) Where off-site mitigation is utilized, the remaining required replacement trees must be planted at an off-site location approved by the Director. Where the site is City-owned property, the public works and/or parks department must also approve the tree planting. Acceptable off-site locations, in order of priority, are as follows:

(a) Publicly owned land in the City of Des Moines including but not limited to: environmentally sensitive areas; regional surface water facilities; or wildlife corridors. Similar lands owned by nonprofit entities that are reserved in open space also qualify.

(b) Publicly owned parks or recreational facilities within the City of Des Moines.

(c) Other mitigation or restoration sites managed by other public entities or private conservation groups.

(d) Public school sites within the City of Des Moines.

(e) Other sites proposed by the applicant, when it is documented that higher priority sites are not available or viable.

(2) Where use of a tree replacement fee is approved by the Director, the fee shall be paid into the City's urban forestry fund established in DMMC 3.51.150. The fee shall be established based on the number of replacement trees being satisfied as follows: The fee for each replacement tree shall cover the cost of a tree of the required size and type, installation (labor and equipment), maintenance for two years, and fund administration.

**Sec. 2.** A new section is added to chapter 3.51 DMMC to read as follows:

**3.51.150 Urban forestry fund.**

(1) There is created an "urban forestry fund."

(2) Funding sources.

(a) The fee for replacement trees and all other money received pursuant to Section 1 of this ordinance;

(b) Sale of trees or wood from City property where the proceeds from such sale have not been dedicated to another purpose;

(c) Donations and grants for the purposes of the fund; and

(d) Other monies designated by the City Council.

(3) Funding purposes. The City shall use money received pursuant to this section for the following purposes:

(a) Acquiring, maintaining, and preserving wooded areas within the City;

(b) Planting and maintaining trees within the City;

(c) Urban forestry education; or

(d) Other purposes relating to trees as determined by the City Council.

**Sec. 3. Codification.**

(1) Section 1 of this Ordinance shall be codified as DMMC 16.25.085, entitled "Off-site mitigation and fees paid in lieu".

(2) Section 2 of this Ordinance shall be codified as DMMC 3.51.150, entitled "Urban forestry fund".

**Sec. 4. 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. 5. Effective date.** This Ordinance shall take effect and be in full force thirty (30) 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 7th day of December, 2017 and signed in authentication thereof this 7th day of December, 2017.

  
MAYOR

APPROVED AS TO FORM:

  
Assistant City Attorney

ATTEST:

  
City Clerk

Published: December 12, 2017

Effective: January 6, 2018

LEGAL NOTICE  
SUMMARY OF ADOPTED ORDINANCE  
CITY OF DES MOINES

ORDINANCE NO. 1694, Adopted December 7, 2017.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to the Environment Code, establishes an off-site mitigation and fees paid in lieu program in chapter 16.25 DMMC, and establishes an associated urban forestry fund in chapter 3.51 DMMC.

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

Bonnie Wilkins, CMC  
City Clerk

Published: December 12, 2017