

ORDINANCE NO. 1695

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the Zoning Code and City land use and development regulations, amending chapters 18.15, 18.190 and 18.195 DMMC to minimize the impact on property owners and tenants affected by the acquisition of right of way by Sound Transit and project design for the Federal Way Link Extension, a regional essential public transportation facility.

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 five-foot berm with three to one side slopes would result in a thirty-five-foot width exceeding the twenty-five-foot width currently required, and

WHEREAS, the preliminary engineering design of the FWLE guideway includes a noise wall throughout most of Pacific Ridge with a minimum height of six feet to buffer the measured noise from the light rail train, and

WHEREAS, Sound Transit prefers a guideway edge design on Sound Transit-acquired parcels that includes a sound wall with architectural treatment, a five-foot cleared maintenance access strip, and a Sound Transit-maintained landscape buffer to minimize the amount of right of way to be acquired from abutting property owners and minimize 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 the Council 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 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, 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, August 14, 2017 and September 6, 2017, public or homeowner association 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 resulted in aesthetically pleasing landscaping, and

WHEREAS, with respect to the FWLE landscape buffer, the City Council intends that these regulation changes will be implemented in four phases: (1) this ordinance will create the regulatory framework for a landscape design; (2) Sound Transit and the City will enter into a development agreement (DA) in 2018 before the final Request for Proposals (RFP) is issued by Sound Transit; (3) the Design Builder (DB) will complete the landscape design based on the RFP requirements and the DA conditions and submit these plans as part of the appropriate permit application; and (4) the requested modifications will be processed as part of the applicable City permit or approval process, conditioned in accordance the City Council-approved DA, and

WHEREAS, the WSDOT SR 509 Project is adjacent to the FWLE in Des Moines and is undergoing a separate environmental and noise review which the City will review prior to finalizing its DA with Sound Transit, and

WHEREAS, with respect to the FWLE noise mitigation, the City Council's basis for the regulation change eliminating the requirement for a five-foot berm in favor of FWLE noise walls relies on the FWLE Final Environmental Impact Statement commitment to mitigate the noise impacts of the FWLE consistent with Sound Transit's Light Rail Noise Mitigation Policy and the Federal Transit Administration Guidance Manual (2006) and Sound Transit's willingness to work collaboratively with the City and WSDOT to identify efficiencies in implementing noise mitigation for both parties to fully mitigate the WSDOT noise; and intends this regulation change will be implemented in four phases similar to the landscape buffer design process above, and

WHEREAS, once passed, the City Council expects Sound Transit to begin working with individual property owners, explaining how the planned landscape buffer design will affect their property and offering additional buffer landscaping on their property as required by chapter 18.195 DMMC, incorporating these negotiated conditions in the RFP and the DA with the City, and

WHEREAS, the City's 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 was issued on October 24, 2017, and the appropriate comment and appeal periods expired on November 17, 2017, and

WHEREAS, the City Council set the date for the public hearing by Resolution No. 1372, fixing the public hearing for December 7, 2017 as required by DMMC 18.30.070, 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, and

WHEREAS, the City Council finds that the Title 18 DMMC amendments contained in this Ordinance comply with the requirements of chapter 36.70A RCW and are appropriate and necessary; now therefore,

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

Sec. 1. DMMC 18.15.020, *Nonconforming Building and Uses Application* and section 3 of Ordinance No. 1655 and section 38 of Ordinance No. 1591 shown below, are each amended as follows:

18.15.020 Application.

(1) The foregoing regulations set forth in this Title shall be subject to the general provisions, conditions, and exceptions contained in this chapter.

(2) The provisions of this chapter shall apply to buildings, structures, land, and uses which become nonconforming because of the application of this Title to them, from classification or reclassification of the property under this Title or any subsequent amendments thereto, or from governmental acquisition of property for right-of-way expansion or essential public facility construction. If a use originally authorized by a variance, conditional use permit, or other valid use permit prior to August 3, 1964, is located within a zone in which such use is not permitted by the terms of this Title, such use shall be a nonconforming use. Uses validly established prior to August 3, 1964, shall not be deemed nonconforming only because of failure to secure a conditional use permit required under this Title.

(3) If a building, structure or land becomes non-conforming solely because of governmental acquisition of a portion of the

property for an essential public transportation facility, the property shall be a legal nonconforming lot and the building, structure or use may continue.

Sec. 2. DMMC 18.15.030, *Nonconforming Building and Uses Purpose* and section 39 of Ordinance No. 1591 shown below, are each amended as follows:

Purpose. This chapter regulates legal nonconforming lots, structures, uses, and other development situations, which were made nonconforming through the adoption of, or amendments to this code, or from governmental acquisition of property for right-of-way expansion for the construction of essential public transportation facilities. This chapter also specifies those circumstances, conditions, and procedures under which such nonconformities may be permitted to continue, expand, or be modified.

Sec. 3. DMMC 18.190.200, *Location and height of wall, fence, or hedge*, and section 400 of Ordinance No. 1591 as amended by section 14 of Ordinance No. 1655 shall be amended by adding (9) to read as follows:

Location and height of wall, fence or hedge. In any Residential Zone a wall, fence, or hedge is permitted under the following conditions:

. . . .

(9) The height restrictions in this section may be modified by the Community Development Director in accordance with DMMC 18.190.200 when the need for such modification results from governmental acquisition of property for right-of-way expansion or construction of essential public transportation facilities.

Sec. 4. DMMC 18.190.280, *Substandard or nonconforming lots in Single-Family Residential Zones*, and section 408 of Ordinance No. 1591 as amended by section 14 of Ordinance No. 1655 shall be amended to read as follows:

Substandard or nonconforming lots in residential or commercial zones. In any residential or commercial zone, a dwelling or building may be established on a lot which cannot satisfy the lot area requirements of the zone; provided that:

(1) All other bulk regulations shall apply, and

(2) The owner of such nonconforming lot does not own any adjoining vacant lots of record of continuous boundary to which the nonconforming or substandard lot can be merged in title or with which the lot lines can be adjusted to create lots of record which satisfy the lot area requirements of the zone or create a lot of record of greater area, and

(3) The owner of such nonconforming lot or lots has not received a fee interest in such lot or lots from a party who at any time subsequent to April 25, 1988 held a fee interest in any adjoining lot of continuous boundary; and further provided, that limitation (3) above shall not apply to a party who either (A) acquires a fee interest by enforcement of a security interest in such property where the security interest was created prior to April 25, 1988, or (B) has acquired such fee interest as the result of a judicial decree of partition by a court of competent jurisdiction, or

(4) The government has acquired a portion of the property for right-of-way expansion or construction of essential public transportation facilities, subject to 18.190.280 (1), (2), and (3) DMMC above.

Sec. 5. DMMC 18.195.140, *Landscaping adjacent to freeways* and section 425 of Ordinance No. 1591, shall be amended to read as follows:

Landscaping adjacent to freeways. A Type II landscaping strip with a minimum width of 25 feet

shall be provided adjacent to freeways within all zones except Single-Family Residential and R-SE Zones.

Sec. 6. A new section is added to chapter 18.195 DMMC to read as follows:

18.195.425. Landscaping for Essential Public Transportation Facilities.

(1) A request to modify landscaping and/or irrigation requirements for essential public transportation facilities shall be detailed in landscape design plans submitted by the essential public transportation facility designer or design-builder. The landscape design shall clearly and in detail state what adjustments of requirements are being requested and the reasons such adjustments are warranted, and shall be accompanied with such supplementary data, such as sketches, surveys, statistical information and if appropriate how the landscape design conforms to design requirements and/or development agreements affecting the project, as deemed necessary to substantiate the adjustment.

(2) A required landscape buffer may be reduced by more than 50 percent for construction of essential public transportation facilities in conjunction with governmental acquisition of property for right-of-way expansion with approved landscape design plans incorporating existing or proposed vegetation, or alternative mitigation measures such as buffer or open space averaging, off-site mitigation and fees paid in lieu pursuant to Chapter 16.25 DMMC or other alternative mitigation approaches which result in an "equal or better" buffer result for the project or benefit to the City.

(3) The requested modifications shall be processed as part of the applicable City permit or approval process in accordance with conditions associated with the approved modifications to required landscaping, landscape buffers and irrigation and as set forth in a City Council-approved development agreement pursuant to RCW 36.70B.

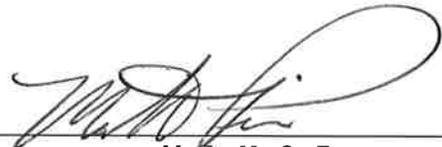
Sec. 7. Severability - Construction.

(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. 8. 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 January, 2017.


M A Y O R

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. 1695, Adopted December 7, 2018.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to the Zoning Code and City land use and development regulations and amends chapters 18.15, 18.190 and 18.195 DMMC to minimize the impact on property owners and tenants affected by the acquisition of right of way by Sound Transit and project design for the Federal Way Link Extension, a regional essential public transportation facility.

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

Bonnie Wilkins, CMC
City Clerk

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