

ORDINANCE NO. 1493

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to zoning, amending accessory, permitted, conditional and unclassified uses in the Downtown Commercial (DC) zone, and amending sections in chapters 18.27 and 18.32 DMMC.

WHEREAS, outright permitted uses and accessory uses and the regulations for such uses located in the DC, Downtown Commercial, zone are listed in DMMC 18.27.020 and 18.27.030, and

WHEREAS, unclassified uses applicable to all zones that exist in the City, including the DC, Downtown Commercial, zone are listed in DMMC 18.32.020, and

WHEREAS, conditional uses applicable to all zones that exist in the City, including the DC, Downtown Commercial, zone are listed in DMMC 18.32.030, and

WHEREAS, approximately 53 acres of land area exists in the City's downtown adjacent to Marine View Drive, 7th Avenue South, and within the City's Marina that is zoned DC, Downtown Commercial, and

WHEREAS, the Council Finance and Economic Development Committee has determined that land in the downtown is highly underutilized and that growth and vitality in the City's downtown is linked to providing for, accommodating, and encouraging property owners to develop to the highest and best use for the downtown neighborhood, and

WHEREAS, personal service oriented commercial use and high residential density within mixed use development are both considered highest and best uses that are desired by the City, and

WHEREAS, a staff evaluation of the DMMC and the uses allowed in the DC zone concluded that certain uses currently allowed in the DC zone are not adequately limited or restricted and may actually deter, curtail, or prevent desired uses and development in the DC zone, and

WHEREAS, some uses currently allowed by the DMMC in the DC zone allow for uses which generate inordinate activity or heavy truck trips; consume vast amounts of land with little economic appreciation, benefit, or service to the broader community; or are visually obtrusive, create noise and odors not conducive to mixed use development, and

WHEREAS, the Finance and Economic Development Committee recognize that modifying use regulations for the DC zone is just one component of an overall strategy to make the downtown neighborhood more attractive for property owner's desiring to make improvements and invest in the City's downtown, and

WHEREAS, the Finance and Economic Development Committee directed staff to brief the full City Council on the proposed changes to the permitted uses in the DC zone, and

WHEREAS, staff reviewed the proposed changes to the DC zone with the City Council at its regular meeting on May 6, 2010

and received direction to prepare a draft ordinance that more specifically identifies how the changes would occur, and

WHEREAS, notice of the public hearing was given to the public in accordance with law and a public hearing was held on the August 5, 2010, and all persons wishing to be heard were heard, and

WHEREAS, pursuant to DMMC 18.56.080 amendment of the zoning code (Title 18 DMMC) is a legislative (Type VI) land use decision, and

WHEREAS, the textual code amendments proposed by this ordinance have been processed in accordance with the requirements of SEPA, a determination of nonsignificance (DNS) was issued on July 20, 2010 by the responsible official, and the applicable SEPA comment period has concluded, 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, the City Council finds that the amendments contained in this ordinance are appropriate and necessary; now therefore,

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

Sec. 1. DMMC 18.27.020 and section 2 of Ordinance No. 1104 as amended by section 3 of Ordinance No. 1237 are each amended to read as follows:

Permitted uses. Only those uses listed below, and uses similar in nature as determined by the planning, building, public works director, may be permitted in the D-C zone. Each use is more fully described in the "Standard Industrial Classification Manual." Listed uses may be otherwise conditioned in this code. The numbers in parentheses following each of the following listed uses refer to the Standard Industrial Classification (SIC) code numbers:

(1) Horticultural specialties limited to community gardens and pea patches by membership (018);

(2) Veterinary services for animal specialties (0742) and dog grooming (0752);

(3) Landscape and horticultural services (078);

(4) Fish hatcheries and preserves (092), limited to those properties that abut or are within the intertidal area of Puget Sound;

(5) Art glassware made in glassmaking plants (3229);

(6) Photocopying and Duplicating Services (7334);

(7) Art and ornamental ware, pottery (3269);

(8) United States Postal Service facilities (4311);

(9) Marinas (4493);

(10) Arrangement of passenger transportation (472);

(11) Retail trade, with ancillary wholesale trade, limited to the following:

(a) Building materials, hardware, and garden supply, except mobile home dealers (52);

(b) General merchandise stores (53);

(c) Food stores (54);

(d) Gasoline service stations, and other alternative motor vehicle fuels (55);

(e) Apparel and accessory stores (56);

(f) Home furniture, furnishings, and equipment stores (57);

(g) Eating and drinking places (58);
and

(h) Miscellaneous retail (59), except fuel dealers (598);

(12) Finance, insurance, and real estate institutions and services (60-67);

(13) Services, limited to the following:

(a) Hotels and motels (701);

(b) Personal and business services, with ancillary wholesale trade (72-73), except the following:

(i) Industrial launderers (7218);

(ii) Billboard advertising (7312);

(iii) Heavy construction equipment rental and leasing (7353);

(iv) Industrial truck rental and leasing (7359); and

(v) Oil extraction equipment rental and leasing (7359);

(c) Automobile parking (7521) limited to properties that are municipally owned or operated or controlled by a City-sanctioned business neighborhood association and provided that facilities for parking are constructed and maintained to meet minimum required parking improvements specified in chapter 18.44 DMMC within three (3) years of the commencement of such use;

(d) General automotive repair shops (7538);

(e) Car washes (7542);

(f) Miscellaneous repair services (76), except the following:

(i) Tank and boiler cleaning service (7699); and

(ii) Tank truck cleaning service (7699);

(g) Motion picture services (78);

(h) Amusement and recreation services (79), except the following:

(i) Adult entertainment facilities and adult motion picture theaters (No SIC); and

(ii) Racing, including track operation (7948);

(i) Health services (80);

(j) Legal services (81);

(k) Educational services (82);

(l) Social services (83);

(m) Museums, art galleries, and botanical and zoological gardens (84);

(n) Membership organizations (86);

(o) Engineering, accounting, research, management, and related services (87); and

(p) Services, not elsewhere classified (89);

(14) Public administration facilities (91-97), except correctional institutions (9223);

(15) Mixed use (no SIC code); and

(16) Public parks (No SIC).

Sec. 2. DMMC 18.27.030 and section 3 of Ordinance No. No. 1104 as amended by section 3 of Ordinance No. 1237 are each amended to read as follows:

Environmental performance standards, use restrictions, and general limitations.

(1) Every use permitted within the D-C zone pursuant to this chapter shall conform to the following general limitations and standards:

(a) As provided by chapter 9.64 DMMC, no use, activity, or equipment shall be permitted that creates a nuisance or is offensive, objectionable, or hazardous by reason of creation of odors, noise, sound, vibrations, dust, dirt, smoke, or other pollutants, noxious, toxic, or corrosive fumes or gases, radiation, explosion or fire hazard, or by reason of the generation, disposal, or storage of hazardous or dangerous wastes or materials in a manner(s) inconsistent with Title 70 RCW as presently constituted or as may be subsequently amended;

(b) Accessory uses are permitted that are customarily appurtenant or incidental to the principally permitted uses;

(c) Landscaping and fencing are required in accordance with chapter 18.41 DMMC;

(d) All uses shall be primarily contained within an enclosed structure except the following:

(i) Outdoor seating and dining;

(ii) Signs;

(iii) Off-street parking, drive-through facilities, and loading areas;

(iv) Motor vehicle fuel pumps;

(v) Display of merchandise sold on site; and

(vi) Play/recreation areas.

(e) In reviewing a proposed permitted use, the planning, building, public works director may waive or include minimal conditions as may be reasonably needed to ensure that the use is consistent with the purpose of the D-C zone, and to minimize the likelihood of adverse impacts.

(2) Home Occupations shall be permitted only as an accessory use, provided that all of the following conditions and limitations are satisfied:

(a) The principally permitted use to which the home occupation is accessory shall be a legally permitted, constructed, and conforming residential component of a mixed use development;

(b) All conditions set forth in DMMC 18.08.020(18) are satisfied.

(3) Boat storage and repair shall be permitted only as an accessory use on property principally permitted for Marina use and shall conform to the following additional limitations and standards:

(a) The size and location of all boat storage facilities shall be consistent with the Council adopted Marina Master Plan;

(b) All out-of-water boat repair shall be within a fully secured and fenced area not accessible by the general public;

(c) All boat repair work shall have containment areas and employ disposal methods for pollutants and toxic substances consistent with Puget Sound Clean Air Agency and NPDES standards;

(d) Only those boats and similar vessels that will be immediately and actively under repair shall be moved to or placed within a designated boat repair facility.

(4) Adult entertainment facilities and adult motion picture theaters are not permitted in the D-C zone.

(5) Nonconforming uses located in the D-C zone shall be allowed to continue to exist, but only to the extent, size, or scale that these uses were legally authorized or licensed to operate by the City. A property containing a single business

entity that is a nonconforming use shall not be allowed to add any other use components or otherwise increase the intensity or facet of the use unless all nonconforming use elements of the property are first completely removed from the site. A property containing multiple business entities and that has one or more nonconforming uses upon it shall not be allowed to add any other use components or otherwise increase the intensity or facet of that portion of the property or building containing uses that are nonconforming unless the addition of a new use results in the complete removal of that portion of the property or building containing a nonconforming use.

(6) Automobile repair, carwashes, automobile service stations, uses with drive-through facilities, and similar uses shall conform to the following limitations and standards:

(a) Automobile repair and the installation of automobile parts and accessories shall be wholly performed within an enclosed structure approved by the building official for such occupancy;

(b) Each automotive and service repair facility shall be limited to a maximum of one service bay for each 7,500 square feet of land area per business site;

(c) Service bays shall be fully utilized to store and park vehicles contracted for repair or service;

(d) The number of vehicles stored or parked outside for repair or service shall not be greater than the minimum number of required parking stalls serving the auto repair facility pursuant to chapter 18.44 DMMC;

(e) No outside parking or storage of employee vehicles, customer vehicles, or vehicles contracted for service shall occur in any area that is not designated and approved by the City as an on-site parking stall;

(f) Motor vehicle fuel pump islands shall be set back a minimum of 15 feet from property lines;

(g) A six-foot high, 100 percent sight-obscuring fence shall be provided along property lines that abut residentially zoned properties, unless waived by the residential property owner prior to building permit issuance.

(7) Welding repair (7692) is only permitted in an enclosed structure.

(8) Social service facilities shall conform to the following limitations and standards:

(a) Outdoor play/recreation areas for children shall be set back a minimum of five feet from property lines; and

(b) Unless specifically authorized by the planning, building, public works director, passenger loading and unloading areas shall be provided on site.

(9) Mixed use development shall conform to the following limitations and standards:

(a) Mixed use structures shall contain area for retail trade or personal and business services, at street level as follows:

(i) Pedestrian access from the public sidewalk to the retail trade or personal and business services shall be provided, and

(ii) A minimum of 60 percent of the street level floor area shall be occupied by retail trade or personal and business services;

(iii) A minimum of 75 percent of the street level building frontage adjacent to public right(s)-of-way shall contain floor area for retail trade or personal and business services uses;

(iv) Building space allocated for retail trade or personal and business service uses at the street level shall have a minimum gross interior depth dimension of 55 feet measured perpendicular to the property line abutting the public street(s) serving the site.

(v) The planning, building, and public works director is authorized to consider and approve up to a 20% reduction of the bulk requirements specified in DMMC 18.27.030 (9)(a)(ii),(iii), and (iv) when a development proposal incorporates on-site parking substantially at street floor level for retail trade or personal and business service uses and the director determines that the proposed reduction(s) does not compromise, interrupt, or interfere with the desired functionality of the building or the continuity of City pedestrian-oriented design goals in the general area and pedestrian access to the site from the public sidewalk or right-of-way.

(b) On-site multifamily recreation area is provided for developments with four or

more dwelling units as provided by chapter 18.45 DMMC, except the minimum area of common recreation space per dwelling unit shall be 25 square feet; and

(c) A detached structure that contains residential uses and does not meet the requirements for mixed use structures is prohibited.

Sec. 3. DMMC 18.32.020 and section 1 of Ordinance No. 175 as amended by section 1 of Ordinance No. 527 as amended by section 1 of Ordinance No. 575 as amended by section 1 of Ordinance No. 588 as amended by section 2 of Ordinance No. 617 as amended by section 1 of Ordinance No. 645 as amended by section 1 of Ordinance No. 674 as amended by sections 3 and 4 of Ordinance No. 693 as amended by section 16 of Ordinance No. 1104 as amended by section 6 of Ordinance No. 1140 as amended by section 5 of Ordinance No. 1170 as amended by section 3 of Ordinance No. 1199 as amended by sections 2 and 3 of Ordinance No. 1237 as amended by section 3 of Ordinance No. 1267 as amended by section 1 of Ordinance No. 1306 as amended by section 3 of Ordinance No. 1374 are each amended to read as follows:

Uses requiring unclassified use permit.

The following uses may locate subject to the issuance of an unclassified use permit processed as provided in chapter 18.60 DMMC:

(1) Booster stations or conversion plants with the necessary buildings, apparatus, or appurtenances incident thereto of public utilities or utilities operated by mutual agencies, except these uses are specifically excluded from the DC RS, SR and S-E zones. Distribution mains are permitted in any zone without review;

(2) Sewage treatment plants, except such use is not permitted in the downtown commercial (D-C) zone;

(3) Sanitary Fills. Reclamation for public purpose by public agency, including drainage or other facilities for off-site discharge of storm water runoff or other liquids or substances, except such use is not permitted in the downtown commercial (D-C) zone and provided further that closed drainage systems or "tight lines" constructed and maintained to sanitary sewer standards (Washington State/APWA) are excluded from this requirement, and drainage systems that are substantially closed are excluded from this requirement, when:

(a) There has been a finding by the City's responsible SEPA official that predicted environmental impacts are significantly less than projected in a totally closed system proposal; and

(b) The system is approved by the City Council in the form of an interlocal agreement;

(4) Towing operations, including storage of impounded vehicles, but no wrecking yards, except that such use is permitted only in the highway commercial (H-C) zone;

(5) Horticultural nurseries, including on-premises sales uses, except such use is not permitted in the downtown commercial (D-C) zone;

(6) Mixed uses, except as otherwise regulated and permitted in the downtown commercial (D-C) and Pacific Ridge (PR) zones;

(7) Group home facilities, in residential zones, personal to the applicant and nontransferable without prior consent of the City Council, and subject to the provisions governing home occupations found in DMMC 18.08.020(18) except such use is not permitted in the downtown commercial (D-C) zone;

(8) Bed and breakfast facilities, in residential zones, personal to the applicant and nontransferable without prior consent of the City Council, and subject to the provisions governing home occupations found in DMMC 18.08.020(18);

(9) Unclassified Uses Limited to the D-C Zone. The uses listed in this subsection, and uses similar in nature as determined by the planning, building and public works director, may be permitted in the D-C zone, and only in the D-C zone, subject to issuance of an unclassified use permit as provided in this chapter. Each use is more fully described in the "Standard Industrial Classification Manual." The numbers in parentheses following each of the following listed uses refer to the Standard Industrial Classification (SIC) code numbers:

(a) Water transportation of passengers (448), and

(b) Communications facilities (48), and

(c) Electric (4911), natural gas (4924), domestic water (4941), and sanitary sewerage services (4952), and

(d) Colleges, universities, junior colleges, professional schools (822), and

(e) Unclassifiable establishments (99) and uses requiring an unclassified use permit

as itemized in DMMC 18.32.020 and as otherwise provided in this chapter;

(10) Unclassified Uses Limited to the B-P Zone. Permitted uses listed in DMMC 18.25.020 utilizing hazardous materials exceeding the quantities in Uniform Building Code Table 3-D, "Exempt Amounts of Hazardous Materials Presenting a Physical Hazard - Maximum Quantities Per Control Area," and Table 3-E, "Exempt Amounts of Hazardous Materials Presenting a Health Hazard - Maximum Quantities Per Control Area," as presently constituted or subsequently amended, may only be permitted subject to issuance of an unclassified use permit as provided in this chapter;

(11) Unclassified Uses Limited to the PR Zone. The uses listed in this subsection, and uses similar in nature as determined by the planning, building, and public works director, may be permitted in the PR zone, and only in the PR zone, subject to issuance of an unclassified use permit as provided in this chapter. Each use is more fully described in the "North American Industry Classification System" (NAICS). The numbers in parentheses following each of the following listed uses refer to NAICS code numbers:

(a) Electric power transmission facilities (22112), such as transformer stations; and

(b) Commuter rail systems (485112);

(12) Unclassified Uses Limited to the PR-C2 Zone.

(a) The uses listed in this subsection may be permitted in the PR-C2 zone, and only in the PR-C2 zone, subject to issuance of an unclassified use permit as provided in this chapter;

(b) Secure community transition facilities as defined by RCW 71.09.020, as presently constituted or as may be subsequently amended, may be permitted in the PR-C2 zone when all of the following conditions are satisfied:

(i) All requirements of chapter 71.09 RCW as presently constituted or as may be subsequently amended;

(ii) The City Council finds that the application conforms to the equitable distribution goals, objectives, and requirements of chapter 71.09 RCW. If the City Council finds that the application raises public safety concerns that outweigh equitable distribution objectives,

the City Council may assign greater weight to public safety concerns than to equitable distribution;

(iii) All requirements of "Policy Guidelines: The Siting and Operation of Secure Community Transition Facilities" published by the Washington State Department of Social and Health Services as presently constituted or as may be subsequently amended;

(iv) All goals, policies, and strategies of the Greater Des Moines Comprehensive Plan;

(v) All requirements of the Des Moines Municipal Code;

(vi) All requirements of the contract and mitigation agreements authorized by chapter 71.09 RCW between the City and the Washington State Department of Social and Health Services;

(vii) All conditions of approval deemed necessary by the City Council and allowed by law to mitigate potential adverse impacts and to preserve public health, safety and welfare. If the City Council finds that potential adverse impacts cannot be mitigated, the City Council may deny the permit;

(13) Unless authorized by other provisions of this title, essential public facilities as defined by RCW 36.70A.200, as presently constituted or as may subsequently be amended except such uses are not permitted in the downtown commercial (D-C) zone.

Sec. 4. DMMC 18.32.030 and sections 1 (24.44.030) and 28 of Ordinance No. 175 as amended by section 8 of Ordinance No. 248 as amended by section 1 of Ordinance No. 391 as amended by section 5 of Ordinance No. 445 as amended by section 4 of Ordinance No. 793 as amended by section 7 of Ordinance No. 1106 as amended by section 27 of Ordinance No. 1197 as amended by section 123 of Ordinance 1200 as amended by section 4 of Ordinance No. 1237 are each amended to read as follows:

Uses requiring conditional use permit. The following uses may locate subject to the issuance of a conditional use permit processed as provided in the hearing examiner code:

(1) Cemeteries; except such use is not permitted in the downtown commercial (D-C) zone and further provided:

(a) No building shall be located closer than 100 feet from a boundary line;

(b) A protective fence and a landscaped strip of evergreen trees and shrubs at least 10 feet in width shall be installed on all common boundary lines with residential zoned property;

(2) Columbariums, crematories, and mausoleums; provided, these uses are specifically excluded from the DC and all residential zones unless inside a cemetery;

(3) Commercial establishments or enterprises involving large assemblages of people or automobiles as follows; provided, these uses are specifically excluded from the DC and all residential zones:

- (a) Amusement parks;
- (b) Boxing and wrestling arenas;
- (c) Ballparks;
- (d) Fairgrounds and rodeos;
- (e) Golf driving ranges;
- (f) Labor camps (transient);
- (g) Open-air theaters;
- (h) Race tracks, drag strips, motorcycle hills, and Go-Kart tracks;
- (i) Stadiums;

(4) Fire stations and public works maintenance and storage facility buildings when located in any residential zone; provided, the following conditions shall be conformed to:

(a) All buildings and structures shall maintain a distance of not less than 20 feet from any property line that is a common property line with residential zoned property; and

(b) A building from which firefighting equipment emerges onto a street shall maintain a distance of 35 feet from such street.

(5) Hospitals, mental and alcoholic; provided, they are specifically excluded from all single-family residential, RA, RM-2,400 and RM-1,800 and DC zones;

(6) Institutions for training of religious orders except such use is not permitted in the downtown commercial (D-C) zone;

(7) Antenna systems which:

(a) Are not within the limitation of DMMC 18.08.020(2)(h) or DMMC 18.20.020(8); or

(b) Consist of parabolic antennas such as microwave dishes; or

(c) Consist of broadcasting or communication stations which transmit electromagnetic radiation;

(8) Recreational areas, commercial, including yacht clubs, beach clubs, tennis clubs, parks, marinas, and similar activities;

(9) Fraternal societies when located in single-family residential zone;

(10) Day care centers, but excluding family day care providers subject to the following minimum conditions:

(a) A play yard or equipment yard shall not be located in any required side or front yard;

(b) All buildings and structures on the lot shall maintain a distance of not less than 20 feet from any property line that is common property line with single-family residential property. If a greater setback is specified in a particular zone then the setback requirements of the particular zone shall prevail over the minimum setback set forth in this subsection;

(c) No day care center shall be located within 150 feet of a highway commercial zone;

(d) State licensing standards for such facilities, chapter 388-73 WAC, shall be met;

(e) Such uses shall comply with the parking code requirements of chapter 18.44 DMMC.

(11) Telecommunication facilities as described in the provisions of Title 20 DMMC.

Sec. 5. 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. 6. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this 14th day of October, 2010 and signed in authentication thereof this 14th day of October, 2010.


M A Y O R

APPROVED AS TO FORM:


Assistant City Attorney

ATTEST:


City Clerk

Published: October 20, 2010

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1493, Adopted October 14, 2010.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance relates to zoning, amends accessory, permitted, conditional, and unclassified uses in the Downtown Commercial (DC) zone, and amends sections in chapters 18.27 and 18.32 DMMC.

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

Sandy Paul, CMC
City Clerk

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