

ORDINANCE NO. 1737

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the Zoning Code and City land use and development regulations, and amending chapters 18.01, 18.15, 18.20, 18.30, 18.52, 18.60, 18.190, 18.200, 18.210, and 18.250 DMMC to correct omissions, errors, and inconsistencies and to clarify City Council intent.

WHEREAS, by June 30, 2015 and every eight years thereafter, RCW 36.70A.130(1) requires the City of Des Moines to take legislative action to review and, if needed, revise its development regulations. Nothing precludes the City from doing so earlier per RCW 36.70A.130(6), and

WHEREAS, the Chief Strategic Officer, acting as the SEPA responsible official, reviewed this proposed non-project action and determined that the proposed textual code amendments result in no substantive changes respecting use or modification of the environment and are therefore categorically exempt from threshold determination and EIS requirements in accordance with WAC 197-11-800(19)(b) and chapter 16.05 DMMC, and

WHEREAS, the City Council set the date for the public hearing by motion on February 13, 2020, fixing the public hearing for March 12, 2020 as required by DMMC 18.30.070, and

WHEREAS, the public hearing was rescheduled to June 11, 2020, 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 in accordance with the DMMC, and

WHEREAS, a public hearing was held on June 11, 2020 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 18.01.050 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 as amended by section 3 of Ordinance No. 1661 as amended by section 3 of Ordinance No. 1669 as amended by section 15 of Ordinance No. 1671 as amended by section 1 of Ordinance No. 1697 as amended by section 3 of Ordinance No. 1714 as amended by section 2 of Ordinance No. 1719 are amended to add the following definition:

“Private garage” means an accessory building or an accessory portion of the main building, enclosed on not less than three sides and designed or used only for the shelter or storage of vehicles owned or operated only by the occupants of the main building or buildings.

Sec. 2. DMMC 18.15.020 and section 38 of Ordinance No. 1591 as amended by section 3 of Ordinance No. 1655 as amended by section 1 of Ordinance No. 1695 are amended to read as follows:

Application.

(1) The foregoing regulations set forth in this Title and Title 16 DMMC 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 as a result of the application of this Title and Title 16 DMMC 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 nonconforming 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. 3. DMMC 18.20.080, and those parts of section 58 of Ordinance No. 1591 as amended by section 2 of Ordinance No. 1628 as amended by section 6 of Ordinance No. 1655 shown below are amended to read as follows:

Project review.

(1) Specific types of project approval are categorized as is set forth in 18.20.080A Project Review Chart below.

18.20.080A Project Review Chart

	Decision Maker	Applicable Code Section
Type I - Administrative land use decisions made without legal requirement for public comment	Planning, Building and Public Works Director	DMMC 18.20.150 and 18.20.160
...		
Modification of same	Planning, Building and Public Works Director	DMMC 18.195.420
<u>Exemptions from shoreline substantial development permit</u>	<u>Planning, Building and Public Works Director</u>	<u>DMMC 16.20.010</u>
<u>Environmentally critical area development exception</u>	<u>Planning, Building and</u>	<u>DMMC 16.10.300</u>

18.20.080A Project Review Chart

	Decision Maker	Applicable Code Section
	<u>Public Works Director</u>	
<u>Modification of parking provisions</u>	<u>City Manager</u>	<u>DMMC 18.210.070</u>
Type II - Administrative land use decisions made after legally required opportunity for public comment	Planning, Building and Public Works Director	DMMC 18.20.170
...		
Exemptions from shoreline substantial development permit	Planning, Building and Public Works Director	DMMC 16.20.010
Environmentally critical area development exception	Planning, Building and Public Works Director	DMMC 16.10.300
<u>Modification of landscaping requirement(s)</u>	<u>Planning, Building and Public Works Director</u>	<u>DMMC 18.195.420</u>
Type III - Quasi-judicial and other decisions by the Hearing Examiner made after legally required opportunity for public comment	Hearing Examiner	DMMC 18.20.180
...		
Modification of parking provisions by Hearing Examiner	Hearing Examiner	DMMC 18.210.070

Sec. 4. DMMC 18.20.190 and section 69 of Ordinance No. 1591 are amended to read as follows:

Review process for Type IV land use action.

A notice of application is required for a Type IV action.

(1) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the City Council may approve, approve with conditions, or deny a Type IV land use action upon compliance with the procedural requirements of chapter 18.240 DMMC, Hearing Examiner.

(2) The City Council's decision regarding a Type IV land use action is appealable to the Superior Court of Washington for King County as specified by DMMC 18.20.290 (appeal from decision of the City Council).

Sec. 5. DMMC 18.20.200 and section 70 of Ordinance No. 1591 are amended to read as follows:

Review process for Type V land use action.

(1) The City Council may approve with conditions, or deny a Type V land use action without public notice other than the notice requirements for public meetings.

(2) The decision of the City Council shall be effective on the date final action is taken during a public meeting. If no other effective date is identified in the City Council action, or as otherwise provided by law.

(3) The City Council's decision regarding a Type V land use action is appealable to the Superior Court of Washington for King County as specified by DMMC 18.20.290 (appeal from decision of the City Council).

Sec. 6. DMMC 18.20.210 and section 71 of Ordinance No. 1591 are amended to read as follows:

Review process for Type VI land use action.

(1) For textual code amendments, the Planning, Building and Public Works Director may schedule a public hearing before the City Council as provided in DMMC 18.30.100.

(2) Upon conclusion of the 15-day comment period, the City Council may approve, approve with conditions, or deny a Type VI land use action upon compliance with the procedural requirements of chapter 18.30 DMMC. Amendments to the Zoning Code, Map and Planned Unit Developments.

(2) Except for matters subject to review by the Central Puget Sound Growth Management Hearings Board as provided by RCW 36.70A.280 as presently constituted or as may be subsequently amended, the City Council's decision regarding a Type VI land use action is appealable to the Superior Court of Washington for King County as specified by DMMC 18.20.290 (appeal from decision of the City Council).

Sec. 7. DMMC 18.30.100 and section 104 of Ordinance No. 1591 are amended to read as follows:

Textual changes to zoning code or area-wide rezones.

Amendments to this Title that constitute a textual change or an area-wide rezone are made in the following manner:

(1) As used in this section, unless the context or subject matter clearly requires otherwise, "textual change" means a change or amendment to this Title except:

(a) Amendments changing the zone of a particular parcel of property (commonly known as a rezone); or

(b) Actions relating to adoption or amendment to the Comprehensive Plan.

(2) No textual change is made without at least one public hearing before the City Council.

(3) Notice of the public hearing shall generally conform with DMMC 17.45.070, Notice. Continued hearings may be held at the discretion of the City Council but no additional notice is required.

Sec. 8. DMMC 18.52.010A, and those parts of the Residential Use Chart and Limitation 15, and section 132 of Ordinance No. 1591 as amended by section 7 of Ordinance No. 1655 as amended by section 2 of Ordinance No. 1697 shown below are amended to read as follows:

Use is: P: Permitted	SFR	RA- 3600	RM- 2400	RM- 1800	RM- 900	RM- 900A	RM- 900B	R-SE	R- SR> 3500 0	R-SR< 35000	PR-R
P/L: Permitted but with special limit- ations											
CUP: Condition al use review required											
UUP: Unclassif ied use review required											
Townhouse development		P/L _[15]	P/L _[15]	P/L _[15]	P/L _[15]						

15. Townhouse Development. This regulation applies to all parts of Table 18.52.010A that have a [15].

Townhouse developments shall be permitted in the RA-3,600 Zone and Multifamily Zones as noted in the table above with no more than one townhouse dwelling per lot. Townhouse developments shall comply with DMMC 18.60.070, General site design requirements, and DMMC 18.60.080, General building design requirements.

Sec. 9. DMMC 18.52.010B and those parts of the Commercial Use Chart, and section 133 of Ordinance No. 1591 as amended by section 12 of Ordinance No. 1601 as amended by section 8 of Ordinance 1618-A as amended by section 2 of Ordinance No. 1644 as amended by section 1 of Ordinance No. 1645 as amended by section 8 of Ordinance No. 1655 as amended by section 4 of Ordinance No. 1656 as amended by section 2 of Ordinance No. 1661 as amended by section 2 of Ordinance No. 1669 as amended by section 1 of Ordinance No. 1672 as amended by section 3 of Ordinance No. 1697 as amended by section 1 of Ordinance No. 1701 as amended by section 2 of Ordinance No. 1714 as amended by section 1 of Ordinance No. 1719 shown below are amended to read as follows:

Use is: P: Permitted	NC	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
P/L: Permitted, but with special limitations									
CUP: Conditional use review required									
UUP: Unclassified use review required									

Offices, business and professional	P/L _{3]}	P/L _{6 .1]}	P		P	P	P	P	P
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Sec. 10. DMMC 18.60.050 and section 152 of Ordinance No. 1591 are amended to read as follows:

Application and review process for townhouse developments.

(1) A subdivision or short subdivision shall be required for all townhouse developments so that

Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans, or similar equipment required to operate and maintain the building, fire walls, parapet walls and guards not taller than the minimum required for compliance with the Washington State Building Code, skylights, flagpoles, chimneys, smokestacks, church steeples and belfries, utility line towers and poles, and similar structures may be erected above the height limits of this Title; provided, however, no penthouse or roof structure or any other space above the height limit prescribed for the zone in which the building or structure is located shall be allowed for the purpose of providing additional floor space; provided further, that rooftop gardens and patios are not classified as additional floor space for the purpose of this section.

Sec. 12. DMMC 18.200.310 and section 491 of Ordinance No. 1591, are amended to read as follows:

Marina District.

The following signs are permitted on commercially zoned properties within the Marina District as established by the Des Moines Comprehensive Plan:

(1) Each public commercial parking lot may have one sign per street frontage not exceeding 24 square feet in sign area.

(2) Reader board signs and changeable message center signs are permitted as per the requirements established in DMMC 18.200.230.

(3) Projecting signs may not project further than six feet from the surface of the building. A right-of-way use permit shall be required for signs projecting over the public right-of-way.

(4) Freestanding signs may not exceed 15 feet in height as measured from the sidewalk grade, and

shall not be located on or above, nor project over the public right-of-way.

(5) No more than one freestanding sign is permitted for properties with less than 300 feet of street frontage. Multiple business properties or multi-building complexes with over 300 feet of street frontage and more than one vehicular access are allowed one additional freestanding sign; provided, that the total allowable sign area is not exceeded and the signs are over 100 feet apart.

(6) Each single business property is permitted a total sign area not to exceed two square feet per lineal foot of street frontage, up to a maximum of 200 square feet. Freestanding signs may not exceed 50 square feet.

(7) Each multiple business property or multi-building complex is permitted one freestanding sign not to exceed one square foot per lineal foot of street frontage up to a maximum of 100 square feet. Each business within shall be permitted a wall sign not to exceed one square foot per lineal foot of tenant street frontage; provided, however, that each business must be guaranteed a minimum of at least 24 square feet regardless of tenant street frontage.

(8) Gasoline price signs shall not be located in, nor project over, the public right-of-way, and shall not be handwritten. Such signs may be freestanding or attached to canopy columns. The area of the price sign shall not count towards the allowed total wall or freestanding signage.

(9) Temporary signs shall be permitted as provided in DMMC 18.200.070.

Sec. 13. DMMC 18.210.170 and section 521 of Ordinance No. 1591 are amended to read as follows:

Surface.

(1) The surface of any required off-street parking or loading facility and accessory accessways (driveways) shall be paved with asphalt or concrete to a standard comparable to the standard for the public street providing access thereto and shall be graded and drained as to dispose of all surface water, but shall not drain across sidewalks. Modifications for wheel strip driveways and permeable pavements pursuant to the City's adopted drainage standards may be considered.

(2) Paved parking areas except in Single-Family Zones shall use paint or similar devices to delineate car stalls and direction of traffic.

(3) Pedestrian walks, used for the use of foot traffic only, shall be curbed or raised six inches above the lot surface. All pedestrian walks shall be conspicuously delineated.

(4) Wheel stops shall be required to protect landscaping and to prevent vehicles from striking buildings, overhanging walkways, property lines, or other limits of a parking facility. Wheel stops shall be installed a minimum of two feet from the end of parking stalls, except in Single-Family Residential Zones.

Sec. 14. DMMC 18.250.070 and section 651 of Ordinance No. 1591 as amended by section 18 of Ordinance No. 1601 are amended to read as follows:

Recreational marijuana regulations for retailers.

State-licensed marijuana retailers may locate in the City pursuant to the following restrictions:

(1) Marijuana retailers must comply with all requirements of chapter 69.50 RCW, chapter 314-55 WAC, and other applicable Washington laws.

(2) Persons may conduct business within the City as a state-licensed marijuana retailer if

located within the Transit Community (T-C) and Woodmont Commercial (W-C) Zones generally located along Pacific Highway South south of Kent-Des Moines Road.

(3) Marijuana retailers shall not locate in a building in which nonconforming retail uses have been established in any location or zone other than those referenced in subsection (2) of this section.

(4) Marijuana retailers shall not operate as an accessory to a primary use or as a home occupation.

Sec. 15. 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. 16. 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 11th day of June, 2020 and signed in authentication thereof this 11th day of June, 2020.



M A Y O R

APPROVED AS TO FORM:

/s/ Timothy George
City Attorney

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ATTEST:



City Clerk

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