

COMMUNITY DEVELOPMENT FIRST DRAFT 6/19/2017

DRAFT ORDINANCE NO. 17-068

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 16.05.330, 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. _____, fixing the public hearing for _____, and

WHEREAS, a public hearing was held on _____ 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:

16.05.040 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 RCW 43.21C, must be used in conjunction with this chapter.

Sec. 2. 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 ~~including WAC 173-806-070 (Flexible thresholds), 173-806-080 (Use of exemptions), and 173-806-190 (Critical areas):~~

(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): ~~when a development action does not occur within any environmentally critical area described and regulated in chapter 16.10 DMMC:~~

~~(i) The construction or location of multifamily development containing up to 15 dwelling units;~~

~~(ii) The construction of an office, school, commercial, recreational, service or storage building with 10,000 square feet of gross floor area or less, and with associated parking facilities designed for up to 35 automobiles;~~

~~(iii) The construction of a parking lot designed for up to 35 automobiles; and~~

~~(iv) Any landfill or excavation of up to 300 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder)~~

<u>Project Types</u>	
Single Family Residential	30 units
Multifamily Residential	20 units
Barn, loafing shed, farm equipment storage, produce storage or packing structure	20,000 square feet
Office, school, commercial, recreational, service, storage building, parking facilities	12,000 square feet and 50 parking spaces
Fill or excavation	500 cubic yards

(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. 3. DMMC 16.05.340 and section 45 of Ordinance 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, ~~designating categorical exemptions that do not apply within critical areas,~~ 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. 4. 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.

~~(1) The City has selected certain categorical exemptions that will not apply in one or more critical areas identified in the critical areas ordinances required under RCW 36.70A.060. The City's environmentally critical areas regulations (chapter 16.10 DMMC) were prepared pursuant to RCW 36.70A.060. Within environmentally critical areas as defined in chapter 16.10 DMMC and areas of special flood hazard as defined in chapter 16.15 DMMC, the following exemptions within WAC 197-11-800 that are inapplicable are: WAC 197-11-800(1); (2) (a) through (h); (5); (6) (a); (24) (a) through (g); and (25) (h), (i).~~

(21) The scope of environmental review of ~~actions within environmentally critical areas~~ related to impacts to critical areas shall be limited to:

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

(b) 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.

~~(3) All categorical exemptions not listed in subsection (1) of this section apply whether or not the proposal will be located in an environmentally critical area. [Ord. 1583 § 46, 2013.]~~

NEW SECTION. 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.

NEW SECTION. Sec. 6. 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 _____ day of _____ and signed in authentication thereof this _____ day of _____, 2017.

Ordinance No. 17-068
Page 6 of 6

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____