ORDINANCE NO. 1649

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON amending the City of Des Moines development regulations relating to the protection and regulation of environmentally critical areas to ensure compliance with the Washington State Growth Management Act (chapter 36.70A RCW); amending chapter 16.10 DMMC to add definitions and update document references, wetland habitat scores, and wetlands mitigation requirements, and amending chapter 16.20 DMMC to add an errata sheet; and finding that the revised development regulations meet the statutory requirements of RCW 36.70A.130(1).

WHEREAS, the Department of Ecology updated the Washington State Wetland Rating System in 2014 to provide a more accurate rating of wetlands based on best available science, and

WHEREAS, the Department of Ecology repealed the state delineation manual and replaced it with the approved federal wetland delineation manual and applicable regional supplements, and

WHEREAS, chapter 16.10 DMMC is not consistent with the updated ratings system and delineation manual, and

WHEREAS, the Shoreline Master Program is not consistent with the updated ratings system and delineation manual, and

WHEREAS, the Shoreline Master Program update was adopted prior to the 2013 reorganization of the City's Development Code, and

WHEREAS, references to sections of the DMMC in the Shoreline Master Program are no longer accurate, and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety, and general welfare to establish comprehensive, uniform, and current provisions for the City's development regulations; now therefore,

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

Sec. 1. DMMC 16.01.050, "*Wetland*" *or* "*wetlands*" definition and section 5 of Ordinance No. 1583 are amended as follows:

Definitions.

"Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created for non-wetland areas created to mitigate conversion of wetlands.

To differentiate between levels of wetland protection and the application of development standards, wetlands shall be rated according to the "Washington State Wetland Rating System for Western Washington" (Ecology Publication No. 14-06-29, October 2014) or as revised by the Department of Ecology. Wetland rating categories shall be applied as the wetland exists at the time of the adoption of this chapter or as it exists at the time of an associated permit application. Wetland rating categories shall not change due to illegal modifications.

(a) Category I. Category I wetlands represent a unique or rare wetland type, are more

sensitive to disturbance than most wetlands, are relatively undisturbed and contain some ecological attributes that are impossible to replace within a human lifetime, or provide a very high level of functions. Category I wetlands are:

(i) Relatively undisturbed estuarine wetlands larger than 1 acre;

(ii) Wetlands that have been identified by the Washington Natural Heritage Program as important ecosystems for maintaining plant diversity;

(iii) Bogs;

(iv) Mature and old-growth forested wetlands over 1 ac in size;

(v) Wetlands in coastal lagoons;

(vi) Interdunal wetlands larger than 1 acre and score high for habitat; or

(vii) Wetlands that perform functions at high levels.

(b) Category II. Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but they still need a relatively high level of protection. Category II wetlands are:

(i) Estuarine wetlands smaller than 1 acre, or those that are disturbed and larger than 1 acre;

(ii) Wetlands with a moderately high level of functions.

(iii) Interdunal wetlands larger than 1 acre.

(c) Category III. Generally, wetlands in this category may have been disturbed in some way and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands. Category III wetlands are:

(i) Wetlands with a moderate level of functions;

(ii) Can often be adequately replaced with a well-planned mitigation project; or

(iii) Interdunal wetlands between 0.1 and 1 acre in size.

(d) Category IV. Category IV wetlands have the lowest levels of functions and are often heavily disturbed. These are wetlands that should be replaceable, and in some cases may be improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

Sec. 2. DMMC 16.05.310(4)(d)(xxix) and section 42(4)(d)(xxix) of Ordinance No. 1583 are amended to read as follows:

(xxix) The approved federal wetland delineation manual and applicable regional supplements.

Sec. 3. DMMC 16.10.100(1) and section 58(1) of Ordinance No. 1583 are amended as follows:

Development restrictions.

(1) Undevelopable Environmentally Critical Areas. The following environmentally critical areas shall remain undeveloped except as otherwise provided in DMMC 16.10.120 through 16.10.140,

16.10.170 through 16.10.190, and 16.10.230 and 16.10.300.

(a) Wetlands and Their Buffers. The edge of the wetland and the outside edge of its buffer shall be determined and field marked by a professional wetland biologist or similarly qualified professional in accordance with the federal wetland delineation manual and applicable regional supplements;

(b) Streams and their buffers. The top of the upper bank of the streams and the outside edge of its buffer shall be determined and field marked by a professional biologist, ecologist, or similarly qualified professional; and

(c) Ravine sidewalls and bluffs and their buffers. The top, toe, and edges of ravine sidewalls and bluffs, and the outside edge of their buffers, shall be determined and field marked by a qualified geotechnical engineer or similarly qualified professional.

Sec. 4. DMMC 16.10.120(2) and (6) and subsections 60(2) and (6) of Ordinance No. 1583 are amended as follows:

(2) Wetland buffers. The following standard buffers shall be established from the wetland edge as delineated and marked in the field:

	Width of Buffer (feet)
Category I Wetlands	
High habitat function (habitat score 8-9)	300
Moderate habitat function (habitat score 5-7)	150
High water quality function and low habitat function or none of the above characteristics (habitat score less than 5)	100
Category II Wetlands	
High habitat function (habitat score 8-9 points)	300
Moderate habitat function (habitat score 5-7)	150
High water quality function and low habitat function or none of the above characteristics (habitat score less than 5)	100
Category III Wetlands	
Moderate habitat function (habitat score 5-7)	150
Low habitat or not meeting above criteria (habitat score less than 5)	80
Category IV Wetlands	
Low functions	50

(6) Wetland Buffer Reduction. The City Manager or the City Manager's designee may allow reduction of the required wetland buffer widths when accompanied by a special study that identifies appropriate mitigation strategies. Reduction of wetland buffer widths may be allowed where a qualified professional wetland scientist demonstrates that:

(a) The reduction in buffer width based on reducing the intensity of impacts from proposed land uses. Buffer widths required for proposed land uses with high-intensity impacts to wetlands may be reduced to those recommended for moderate-intensity impacts under the following conditions:

(i) For wetlands that score moderate or high for habitat (5 points or more for the habitat functions), the width of the buffer can be reduced if both of the following criteria are met:

(A) A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other priority habitats as defined by the Washington State Department of Fish and Wildlife. The corridor must be protected for the entire distance between the wetland and the priority habitat by some type of legal protection such as a conservation easement.

(B) Measures to minimize the impacts of different land uses on wetlands, such as the examples summarized in Table 8C-8 from "Wetlands in Washington State: Volume 2 - Protecting and Managing Wetlands" (Ecology, 2005), are applied.

(ii) For wetlands that score less than 5 points for habitat, the buffer width can be reduced to that required for moderate land-use impacts by applying measures to minimize the impacts of the proposed land uses. Measures include but are not limited to the following: direct light and noise away from wetlands, route untreated runoff away from wetlands, apply an integrated pest management program, use privacy fencing or vegetative buffer to delineate the wetland buffer edge and discourage disturbance, and use best management practices to control dust (see examples in Table 8C-8).

Sec. 5. DMMC 16.10.140 and section 62 of Ordinance No. 1583 are amended as follows:

Wetlands - Limited exemptions. The City Manager or the City Manager's designee may allow exemptions from the provisions of this chapter based on the following criteria:

(1) Wetlands larger than 4,000 square feet will be evaluated using standard procedures for wetland review.

(2) Wetlands between 1,000 and 4,000 square feet shall be evaluated using the Washington State Wetland Rating System for Western Washington (Ecology Publication No. 14-06-29, October 2014, or as revised) to establish category and evaluate functions. The following criteria and local knowledge of natural resources shall be used to determine whether to exempt wetlands between 1,000 and 4,000 square feet from the requirement to avoid impacts.

(a) The requirement to avoid impacts may be dropped for Category III and IV wetlands between 1,000 and 4,000 square feet that meet all of the following criteria:

(i) Wetland is not associated with a riparian corridor; and

(ii) Wetland is not part of a wetland mosaic; and

(iii) Wetland does not score 5 points or more for habitat in the wetland rating system; and

(iv) Wetland does not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife.

(b) Impacts allowed under this provision to these wetlands will be fully mitigated as set forth in DMMC 16.10.150.

(c) All Category I and II wetlands between 1,000 and 4,000 square feet should be evaluated with full mitigation sequencing and buffer establishment. Any approved impacts should be adequately compensated by mitigation as set forth in DMMC 16.10.150.

(3) Wetlands less than 1,000 square feet shall be exempt from regulation where the applicant has shown that they:

(a) Are not associated with a riparian corridor;

(b) Are not part o f a wetland mosaic; and

(c) Do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife.

Sec. 6. DMMC 16.10.150(7) and section 63(7) of Ordinance No. 1583 are amended as follows:

(7) Mitigation ratios. The following ratios shall apply to creation or restoration that is in-kind, is on-site, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Wetland Mitigation Ratios			
	Enhancement	Rehabilitation	Creation
Category I	16:1	8:1	4:1
Category II	12:1	6:1	3:1
Category III	8:1	4:1	2:1
Category IV	6:1	3:1	1.5:1

(a) The mitigation ratio is the acreage required for compensatory mitigation divided by the acreage of impact.

(b) The ratios are for a concurrent compensatory mitigation project. If the impacts to a wetland are to be mitigated by using an approved and established mitigation bank, the rules and ratios applicable to the bank should be used.

(c) The ratios are based on the assumption that the category, based on wetland ratings established in DMMC 16.01.050 (definition of wetland), and hydrogeomorphic (HGM) class/subclass of the wetland proposed as compensation are the same as the category and HGM class/subclass of the wetland impacts.

(d) Ratios for projects in which the category and HGM class/subclass of wetlands proposed as compensation is not the same as that of the wetland impacts will be determined on a case-by-case basis using the recommended ratios as a starting point. The ratios could be higher in such cases.

(e) Creation can be used in combination with rehabilitation or enhancement. For example, two acres of impact to a Category II wetland would require two acres of creation (i.e., replacing the lost acreage at a 1:1 ratio) and eight acres of rehabilitation or sixteen acres of enhancement.

(f) Generally the use of enhancement alone as compensation is discouraged. Using enhancement in combination with some amount of creation is preferred.

Sec. 7. DMMC 16.20.10 and section 113 of Ordinance No. 1583 are amended as follows:

Shoreline Master Program - Adopted. The "City of Des Moines Shoreline Master Program" attached as

Exhibit "A" to the Ordinance codified in this chapter, dated January 27, 2011, and consisting of 133 pages, and Appendix "A" entitled "Shoreline Inventory and Characterization Report," dated March 2005, are adopted as the official Shoreline Master Program for the City and an errata sheet, Exhibit "B", is added to the SMP in 2016. All SMP documents are available at the City Clerk's office and on the City's website, www.desmoineswa.gov.

Sec. 8. 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. 9. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its final passage by the Des Moines City Council.

PASSED BY the City Council of the City of Des Moines this 12th day of May, 2016 and signed in authentication thereof this 12th day of May, 2016.

M A Y O R

APPROVED AS TO FORM:

Assistant City Attorney

ATTEST:

City Clerk

Published: May 17, 2016

Effective Date: June 11, 2016

EXHIBIT A

ORDINANCE NO. 1649

Findings of Fact
Review and Revision of Comprehensive Plans and Development Regulations Required (RCW 36.70A.040)

1. Counties and cities required to plan under RCW 36.70A.040 must review, and revise if necessary, their entire comprehensive plan and development regulations. These cities and counties should affirm this status in their findings.

2. The City of Des Moines is required to plan under RCW 36.70A.040. Every seven years, RCW 36.70A.130(1) requires City of Des Moines to take legislative action to review and, if needed, revise its comprehensive plan and development regulations, including its policies and regulations designating and conserving natural resource lands and designating and protecting critical areas to comply with the requirements in Chapter 36.70A RCW.

3. Pursuant to RCW 36.70A.130(4), the deadline for the City of Des Moines to comply with the update required by RCW 36.70A.130(1) is June 30, 2015.

4. On June 25, 2015, the City of Des Moines adopted Ordinance No. 1623 revising and updating the comprehensive plan now entitled *Des Moines 2035: Charting Our Course for a Sustainable Future*.

5. Washington Department of Commerce August 19, 2015 letter to the City of Des Moines indicating:

   a. Receipt of Des Moines's adopted Ordinance No. 1623 on June 6, 2015;

   b. Completion of the City's comprehensive plan review and update required under RCW 36.70A.130(1); and

   c. Notifying the City of the need to finalize the review and update of the City's development regulations and critical area regulations.

6. On August 11, 2015, consultant Parametrix prepared a technical memorandum related to the Federal Emergency Management Agency's National Flood Insurance Program Compliance Review

that discussed the City's on-going participation in the Program and strategies to achieve compliance with the Biological Opinion from National Marine Fisheries Services to apply Reasonable and Prudent Alternatives to protect listed species and their critical habitat, referred to as Door 1, Door 2, or Door 3 strategies and recommending that the City of Des Moines remain in Door 3.

7. On October 26, 2015, consultant AHBL, Inc. prepared a GAP analysis of the City's environmentally critical area regulations currently in effect in the City of Des Moines for consistency with the requirements of Chapter 36.70A.172 RCW and best available science. This analysis was supplemented by a February 12, 2016 technical memorandum related to the National Flood Insurance Program Compliance. Based on this analysis, AHBL, Inc. prepared proposed revisions to Des Moines environmentally critical area regulations it concluded are needed to comply with Chapter 36.70A RCW.

8. The Des Moines City Council Environment Committee reviewed the analysis and recommended updates to the environmentally critical area regulations at their February 18, 2016 meeting and recommended that proposed revisions be brought forward to the full City Council at a public hearing.

9. On March 10, 2016, a 60-day notice of intent to adopt the proposed amendments was sent to the Washington State Department of Commerce and the City received acknowledgement from Commerce that the procedural requirements of RCW 36.70A.106 have been met on March 16, 2016.

10. On March 31, 2016, Des Moines City Council adopted Resolution No. 1327 setting a public hearing date on May 12, 2016 to consider Draft Ordinance No. 15-147 amending the City of Des Moines development regulations relating to the protection and regulation of environmentally critical areas to ensure compliance with the Washington State Growth Management Act (chapter 36.70A RCW).

11. On April 6, 2016 a combined Notice of Public Hearing and SEPA Determination of Nonsignificance was issued providing for a 15-day comment period and 10-day appeal period and no comments or appeals were filed.

12. On May 12, 2016, the Des Moines City Council held a public hearing to receive public comments on the recommended findings on review and proposed revisions. Based on its review of the

requirements of Chapter 36.70A RCW, the analysis and proposed revisions prepared by (staff and consultants AHBL, Inc. and Parametrix), the recommended findings on review and proposed revisions, the Des Moines City Council finds and declares that the review and needed revisions have been prepared in conformance with applicable law, including Chapter 36.70A RCW, Chapter 43.21C RCW, and appropriate public participation and adoption process established in chapter 18.20 DMMC.

EXHIBIT B

ORDINANCE NO. 1649

City of Des Moines Shoreline Master Program Errata

Page	Section	Correction
2	1.1	Change "Des Moines Zoning Code (18.90 DMMC)" to "Des Moines Municipal Code (16.20 DMMC)"
	1.4	"Chapter 18.86" should read "Chapter 16.10"
	1.4	"DMMC 18.86" should read "DMMC 16.10" (two entries)
8	1.5	"DMMC 18.86" should read "DMMC 16.10" (two entries)
64	6.1.2(2(a)	"DMMC 18.86" should read "DMMC 16.10"
66	6.1.4(1)	"DMMC 18.86" should read "DMMC 16.10" (two entries)
	6.1.4(2)	"DMMC 18.86" should read "DMMC 16.10"
	6.1.4(4)	"DMMC 18.86" should read "DMMC 16.10"
	6.1.4(5)	"DMMC 18.86" should read "DMMC 16.10"
77	6.3.2(1)	"DMMC 18.48" should read "DMMC 18.15"
	6.3.2(1)(a)	Change "18.48.030" to "18.15.050"
	6.3.2(1)(b)	Change "18.48.040" to "18.15.060"
	6.3.2(1)(c)	Change "18.48.050" to "18.15.070"
80	6.3.6(2)	"DMMC 18.42" should read "DMMC 18.200"
102	7.4.7	"DMMC 17.40.070" should read "DMMC 18.20.130"
108	7.5.6	"DMMC 17.40.070" should read "DMMC 18.20.130"
113	Chapter 8	Change "Des Moines Zoning Code (18.04 DMMC)" to "Des Moines Municipal Code (DMMC 16.01)"
132	Wetland	Change "Washington State Wetlands Identification and Delineation Manual (Ecology Publication No. 96-94, March 1997)"

to "approved federal wetland delineation manual and applicable regional supplements"

"Chapter 18.86 DMMC" should read "Chapter 16.10 DMMC"

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1649, Adopted May 12, 2016.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance amends the City of Des Moines development regulations relating to the protection and regulation of environmentally critical areas to ensure compliance with the Washington State Growth Management Act (chapter 36.70A RCW); amends chapter 16.10 DMMC to add definitions and update document references, wetland habitat scores, and wetlands mitigation requirements, and amends chapter 16.20 DMMC to add an errata sheet; and finds that the revised development regulations meet the statutory requirements of RCW 36.70A.130(1).

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

Bonnie Wilkins, CMC
City Clerk

Published: May 17, 2016