

AGENDA

REGULAR MEETING DES MOINES CITY COUNCIL

April 14, 2011 - 7:30 p.m.

CALL TO ORDER - Mayor Sheckler

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC:

At this time the audience is invited to comment on any topic to bring it to Council's attention. Please sign in prior to the meeting and limit comments to three minutes or less.

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

CONSENT CALENDAR

Item 1: APPROVAL OF MINUTES

Motion is to approve minutes from the meetings of March 24 and April 7, 2011.

Item 2: Item 2: APPROVAL OF FINDINGS:

Motion is to approve Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, which have been recorded on a listing and made available to the City Council.

Claim checks \$791,480.52

Payroll fund transfers in the total amount of \$466,711.87

Total certified Wire Transfers, Voids, A/P & Payroll vouchers are \$1,258,192.39

Item 3: Set Public Hearing Date for May 12, 2011 for Marina District Zoning Changes

Motion is to adopt Draft Resolution No. 11-011 setting a public hearing on May 12, 2011 to consider the proposed amendments to Downtown Commercial Zone codifies in Chapter 18.27 DMMC

OLD BUSINESS

Des Moines Sign Code – Chapter 18.42

Staff Presentation: Planner Jason Sullivan

NEW BUSINESS

1. Des Moines Farmer's Market Agreement
Staff Presentation: Parks Recreation and Senior Services Director Patrice Thorell
2. Fireworks Over Des Moines
Staff Presentation: Harbormaster Joe Dusenbury
3. Pacific Ridge Amendments and Set Public Hearing Date
Staff Presentation:

NEXT MEETING DATE – April 28, 2011

ADJOURNMENT

MINUTES

REGULAR MEETING
DES MOINES CITY COUNCIL

March 24, 2011 - 7:30 p.m.

CALL TO ORDER - Mayor Sheckler called the meeting to order at 7:30 p.m.

PLEDGE OF ALLEGIANCE – The flag salute was led by Councilmember Scott.

ROLL CALL

Present were Mayor Sheckler; Mayor Pro-Tem Kaplan; Councilmembers Scott Thomasson, Dan Sherman, Matt Pina, Melissa Musser and Carmen Scott.

Staff present were City Manager Tony Piasecki; City Attorney Pat Bosmans; Assistant City Attorney Tim George; Finance Director Paula Henderson; Planning Manager Denise Lathrop; Land Use Planner Laura Techico; Land Use Planner Jason Sullivan; Clerk Autumn Lingle.

CORRESPONDENCE

There was no correspondence.

COMMENTS FROM THE PUBLIC:

There were no comments from the public.

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

Councilmember Scott

- Brothers with Different Mothers Comedy Team at Highline Community College

Mayor Pro-Tem Kaplan had no report.

Councilmember Musser

- Municipal Facilities Committee
- Draft Intergrated Des Moines Beach Park & Marina Business Development Plan

Councilmember Pina

- SeaMar Redevelopment in Des Moines

Councilmember Sherman

- Frank Ely Memorial Event
- Public Board of Health Committee Meeting
- Suburban Cities Association Meeting

Councilmember Thomasson had no report.

PRESIDING OFFICER'S REPORT

Mayor Sheckler

- Tina Orwell, Democrat, Representative for the 33rd District discussed House Bill #1997.

ACTION/DIRECTION

MOTION was made by Mayor Sheckler to have Council adopt a letter of support for House Bill #1997 to be sent to the Speaker of the House and the Chair of the Senate Ways and Means Committee, Councilmember Musser, second. The motion passed 5-2. Councilmember Sherman voted no because

funds would not come directly to the City of Des Moines. Councilmember Thomasson did not support the motion because a super majority vote is needed to pass this type of tax.

Mayor Sheckler officially announced he will run for election again.

ADMINISTRATION REPORTS

City Manager Piasecki

- S.C.O.R.E. Right-of-Way funds
- Port of Seattle road purchase in Port buyout area
- Matrix review of Police Department
- Temporary Closing of 216th

Part 150 Noise Study Briefing - Port of Seattle

Rob Adams with Landrum & Brown, Inc. provided a PowerPoint presentation.

Council discussion followed.

CONSENT CALENDAR

Item 1: APPROVAL OF MINUTES

Motion is to approve minutes from the meeting of March 10, 2011

Item 2: Item 2: APPROVAL OF FINDINGS:

Motion is to approve Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, which have been recorded on a listing and made available to the City Council:

Claim checks \$ 809,552.73

Payroll fund transfers in the total amount of \$ 446,664.60

Total certified Wire Transfers, Voids, A/P & Payroll vouchers are \$ 1,256,217.33

Item 3: Solid Waste License Period – Removal of Maximum License Period Cap

Motion 1 is to suspend Rule 26 (a) in order to enact Draft Ordinance No. 11-032 on first reading.

Motion 2 is adopt Draft Ordinance No. 11-032 amending DMMC 7.08.050 removing the maximum license period established for solid waste collection licenses.

Item 4: Request for Additional Contingency Funds to Complete Marina Water Main Replacement

Motion is to authorize an additional \$1500 in contingency funding for the Water Main Replacement Project and authorize the staff to pay for the remaining tasks for the completion of the project, subject to the City Manager's approval.

ACTION/DIRECTION

Councilmember Musser moved approval of the Consent Agenda as presented; Mayor Pro-Tem Kaplan, second. The Consent agenda was approved by a unanimous vote.

Mayor Sheckler announced a 10-minute break at 8:52 p.m. Council reconvened at 9:02 p.m.

PUBLIC HEARING

Draft Ordinance No.10-117, Sign Code

Senior Land Use Planner Jason Sullivan provided a PowerPoint presentation on upgrading recent sign codes.

Mayor Sheckler closed the Public Hearing.

ACTION/DIRECTION

MOTION was made by Councilmember Pina to pass Draft Ordinance 10-117 amending the City's Sign Code to a second reading on April 14, 2011, Mayor Pro-Tem Kaplan, second. Vote was unanimous.

OLD BUSINESS

1. Draft Ordinance No. 11-014, Update DMMC to Reflect Actual Financial Accounting
Finance Director Paula Henderson explained that Draft Ordinance No. 11-014 repeals sections of chapter 3.48 DMMC for funds that are no longer in use.

ACTION/DIRECTION

Motion 1: was made by Mayor Pro-Tem Kaplan to suspend Rule 26 (a) in order to enact Draft Ordinance No. 11-014 on first reading, Councilmember Musser, second. Vote was unanimous.

Motion 2: was made by Mayor Pro-Tem Kaplan to enact Draft Ordinance No. 11-014, relating to revenue and finance and repealing DMMC 3.48.010, 3.48.020, 3.48.040, 3.48.060, 3.48.080, 3.48.100, and 3.48.110, Councilmember Musser, second. Vote was unanimous.

NEW BUSINESS

1. Draft Ordinance No. 10-137 relating to Junk Vehicles.
Assistant City Attorney Tim George presented proposals to amend current junk vehicle ordinance.

ACTION/DIRECTION

MOTION was made by Mayor Pro-Tem Kaplan, to suspend Rule 26(a) in order to enact Draft Ordinance No. 10-137 on first reading, Councilmember Scott, second. Vote was unanimous.

MOTION was made by Mayor Pro-Tem Kaplan, to enact Draft Ordinance No. 10-137 clarifying and updating enforcement mechanisms to reduce the number of junk vehicles on private property. Councilmember Scott, second.

Amendment to the Motion was made by Councilmember Sherman on Ordinance page 8 of 9, under violation penalty, to eliminate number 2. Motion failed 2 to 5.

Amendment to the Motion was made by Mayor Pro-Tem Kaplan to reinstate on page 4 subsection 3, but with a 10-day time period. Motion passed 6 to 1, with Councilmember Musser opposed.

MAIN MOTION passed 6 to 1, with Councilmember Sherman voting no because penalty is too severe.

NEW BUSINESS (see Presiding Officers Report)

2. SHB 1997 – An act relating to providing economic development by funding tourism promotion, workforce housing, art and heritage programs, and community development

NEXT MEETING DATE – March 26, 2011 (City Council Retreat in City Council Chambers).

ADJOURNMENT

Mayor Pro-Tem Kaplan moved to adjourn; Councilmember Scott, second. The vote to adjourn was unanimous. The meeting was adjourned at 10:14 p.m.

Respectfully submitted,
Autumn Lingle
Clerk

Consent Item #2

CITY OF DES MOINES
Voucher Certification Approval
14-Apr-11
Auditing Officer Certification

Vouchers and Payroll transfers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing, which has been made available to the City Council.

As of April 14, 2011 the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the attached list and further described as follows:

The vouchers below have been reviewed and certified by individual departments and the City of Des Moines Auditing Officer.

Claims Vouchers:		Numbers			Amounts		
Total A/P Checks/Vouchers		127639	-	127893	255	783,796.97	
Electronic Wire Transfers	3	DEPT OF REVENUE, CHICAGO TITLE INS				8,582.29	
Subtotal for this Council Packet						792,379.26	
Voided Claim Checks this check run:		127390/127746			2	(898.74)	
Voided Claim Checks from previous check runs							
Total Claims/Wire Transfers/Voids						157	791,480.52

Payroll Vouchers:	DISBURSED 04/05/11					Amounts
Payroll Checks	17050	-	17071	=	22	28,214.70
Direct Deposit	140001	-	140144	=	144	278,680.33
Payroll Taxes						65,883.64
Wage/Garnishments						1,194.07
Voids				=		
Electronic Wire Transfers						92,739.13
ICMA 401 Forfeitures						
Total Claims						466,711.87
Total certified Wire Transfers,Voids, A/P & Payroll vouchers for April 14, 2011						1,258,192.39

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Setting Date for Public Hearing
for Amendments to the Downtown
Commercial Zone (Chapter 18.27 DMMC)

ATTACHMENTS:

1. Draft Resolution 11-011
2. Draft Ordinance 11-011 Executive
Summary

FOR AGENDA OF: April 14, 2011

DEPT. OF ORIGIN: Planning, Building, &
Public Works

DATE SUBMITTED: April 6, 2011

CLEARANCES:

[X] Planning, Building & Public Works AA
[X] Legal PB

APPROVED BY CITY MANAGER FOR
SUBMITTAL: JA

Purpose and Recommendation:

The purpose of this agenda item is to set a public hearing date to consider the amendments related to building height, setback, recreational requirements and parking for the Downtown Commercial Zone codified in Chapter 18.27 DMMC. Administration recommends the City Council approve Draft Resolution 11-011 setting a public hearing of April 28, 2011 to consider the proposed amendments to Chapter 18.27 DMMC.

MOTION:

"I move to adopt Draft Resolution No. 11-011 setting a public hearing on May 12, 2011 to consider the proposed amendments to Downtown Commercial Zone codified in Chapter 18.27 DMMC."

Background:

Planning for the Marina District is one of the top strategic objectives of the Des Moines City Council. Over the past 15 months, the City Council Finance and Economic Development Committee has been working hard to identify ways to revitalize the Marina District and accelerate positive change in the City. This work has been guided by the Vision and Mission adopted for the Marina District as well as input from our citizens, the Marina District Stakeholder Group, and leaders in the business and development communities.

The Council intends to improve the economic health of the Marina District by focusing public investments in opportunity areas to create nodes of activity and stimulate economic investment;

helping and providing incentives to develop economically viable projects; enhancing the identity of the Marina District through branding; and marketing our existing and future assets – Marina, Historic Beach Park, Des Moines Elementary School, the variety of shops, restaurants, and other businesses, Highline Community College, and interesting views.

These economic development goals seek to create a thriving business district that provides a variety of goods, services, activities and events for our community and visitors to enjoy.

A number of strategies have been identified to overcome development obstacles in the Marina District – these relate to traffic and parking, building heights and setbacks, development incentives and tools to spur economic investment, and provide more flexibility in the City's development regulations. With the help of the Marina District Stakeholder Group who made recommendations on land use policies, development regulations and implementation strategies for the Marina District, and under the direction of the Finance and Economic Development Committee, staff developed a draft ordinance to serve as a starting point for City Council discussion.

Key elements for consideration include:

- Establishing a 20-foot setback from street corners to enhance visibility and allow for the creation of dynamic pedestrian spaces;
- Providing an opportunity to create angled parking along Marine View Drive;
- Raising the base building height along 7th Avenue S to 45 feet;
- Establishing building height bonus areas and an associated public benefit system that would allow building heights of 45-, 65- and 75-feet if sufficient public benefits are included in the project; and
- Establishing the use of a "floor area ratio" (i.e., the ratio of the building size to the lot size) as a more flexible standard for regulating building massing and size than the current code provides.

A detailed description of each of the proposed amendments is provided in the Technical Memorandum prepared by staff and entitled *Draft Ordinance 11-011 Executive Summary* and included as Attachment 2.

The City Council held a 6-hour Saturday retreat to begin their discussion of the proposed draft ordinance on March 26, 2011 and continued that discussion on April 7th.

Discussion:

Amendments to Title 18 DMMC (Zoning) are considered Type VI Land Use Actions pursuant to DMMC 18.56.080(1) and as such requires a public hearing with the City Council pursuant to DMMC 18.56.200 and 18.60.040. The date of the public hearing to consider the amendments to the Downtown Commercial Zone – Chapter 18.27 DMMC is required to be set by motion of the City Council pursuant to DMMC 18.60.120(3). Approval of the resolution setting the hearing date does not obligate the City Council to approve any of the amendments that would be presented at the public hearing.

Alternatives:

The City Council may:

1. Adopt the draft resolution as written.
2. Adopt the draft resolution with amendments by the City Council establishing a different hearing date.
3. Decline to adopt the draft resolution setting the hearing date to consider amendments to the Downtown Commercial Zone.

Financial Impact:

No financial impact is foreseen by setting the public hearing.

Recommendation/Conclusion:

Administration recommends that the City Council set a hearing date.

Concurrence:

Planning, Building, and Public Works and the Legal Departments concur.

PLANNING, BUILDING, AND PUBLIC WORKS' FIRST DRAFT
04/05/2011

DRAFT RESOLUTION NO. 11-011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a public hearing to consider Draft Ordinance No. 11-011 which amends dimensional and parking standards established for the Downtown Commercial Zone in Chapter 18.27 DMMC.

WHEREAS, the City Council is considering amendments to Chapter 18.27 DMMC relating to the dimensional standards for new buildings zoned Downtown Commercial in the Marina District Neighborhood, and

WHEREAS, a public hearing is necessary to receive public comment regarding this proposal, and

WHEREAS, a public hearing is required for adoption of an ordinance which amends a portion of the Title 18 DMMC commonly referred to as the Zoning Code; now therefore,

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

The matter of amendments to Chapter 18.27 DMMC, *Downtown Commercial Zone*, is set for a public hearing before the City Council on Thursday, May 12, 2011, at 7:30 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue South, Suite B, Des Moines, Washington.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2011 and signed in authentication thereof this ____ day of _____, 2011.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

ATTACHMENT 1

Memorandum



To: City Manager's Office

From: Planning, Building and
Public Works Department

Date: March 18, 2011

Re: Downtown Commercial Zone Modifications

The purpose of this memo is to provide an executive summary of the modifications to the City's Downtown Commercial Zone proposed in each of the sections of the attached Draft Ordinance. The information included in this ordinance is the result ongoing work with the City Council Finance and Economic Development Committee and the Marina District Stakeholder Group who made recommendations on land use policies, development regulations and implementation strategies for the Marina District planning area. The modifications also reflect the changes requested by the Finance and Economic Development Committee.

1. SECTION 1:

DMMC 18.27.010 (Purpose) is being proposed to be amended by removing the reference to appeals of administrative decision to the hearing examiner. This information was placed into the Chapter prior to the development of the Local Project Review Act (Chapter 36.70B RCW). These provisions are current in Chapter 18.56 DMMC, which contains all of the City's Land Use Review Procedures.

2. SECTION 2:

DMMC 18.27.020 (Permitted Uses) is proposed to be amended to reflect the change in the name of the chapter and the change to the term "City Manager or designee."

3. SECTION 3:

DMMC 18.27.030 (Environmental Performance Standards) is proposed to be amended to reflect the change to the term "City Manager or designee." Additionally, the requirement for mixed use buildings to provide 25 square feet of common area is proposed to be removed as a requirement. The Marina District is located adjacent to the Marina and Beach Park which has the capacity to provide the needed recreational area. Please note that even if a developer selected not to provide the space and instead to pay the in-lieu fees, the funds could not be used for the repair or maintenance of existing facilities. State Law requires that those funds be used to purchase or acquire new park properties. Finally, the reference to the Landscaping Code (Chapter 18.41 DMMC) is proposed be removed as the same requirement is provided in DMMC 18.27.050. Staff believes that requirements associated with site design should be in the Site Design Section and not Environmental Performance Section.

4. SECTION 4:

DMMC 18.27.040 (Dimensional Standards) is proposed to be amended to reflect the change to the term "City Manager or designee". Additionally, the following modifications are proposed:

- a. The building height was raised to 45 feet for all properties in the Downtown Commercial Zone that are not adjacent to Marine View Drive and are north of South 226th Street. The

properties on the west and east side of Marine View Drive would have the same building height as allowed under the current zoning requirements (35 feet). While the QFC block is within the proposed 45 foot area, the height is required to be measured from 7th Avenue South so the building would still be approximately 35 feet as measured MVD given the topography change across the property. Please see Figure 1 on page 14 of the Draft Ordinance for an illustration of the proposed height limit areas.

- b. A height bonus was also established for those areas identified of Figure 2 on page 17 of the Ordinance. In order to obtain this height bonus, the applicant would have to demonstrate that the proposed project does not exceed the floor area ratios established by the code. This will be discussed in more detail in Section 6. Additionally, the applicant would have to have a minimum site area of 20,000 square feet, provide pedestrian plazas, provide for commercial uses, and sign a no protest agreement regarding the formation of a Parking and Business Improvement Area as regulated in Chapter 36.87A RCW.

Based on the minimum lot area for the height bonus of 20,000 square feet and the Floor Area Ratio (FAR)(defined as the ratio of total building square footage to lot area) established for each area in Section 6 of this Ord. and the square footages established by this section for each area the following number of buildings could be built:

- Area 1 of Figure 2 with a FAR of 3.2 would allow a maximum of 4 buildings to be built to 45 feet along MVD
 - Area 2 of Figure 2, with a FAR of 3.8 would allow approximately 10 buildings to be built to 65 feet in Area 2 of Figure 2 along 7th Avenue.
 - There is no maximum established for Area 3 of Figure 2 as this only applies to the QFC block and as such would result in one or two taller buildings. Also the buildings located in Area 3 (the QFC block), the building height is measured from 7th Avenue so while the building would be 75 feet from 7th Avenue given the grade changes, the building would be 65 feet tall if measured from Marine View Drive
- c. A setback for all buildings located on corner lots is also proposed to ensure that buildings do not crowd the corners in order to encourage dynamic pedestrian environments and maintain good site visibility for vehicular traffic.

5. SECTION 5:

DMMC 18.27.050 (General Site Design Requirements) is proposed to be amended to reflect the change to the term "City Manager or designee". Additionally, the following modifications were made:

- a. Language is proposed to be added that would clearly stated that buildings along MVD are not required to abut or be adjacent to the sidewalk. Language is also proposed that would require new buildings along 7th Avenue and 6th Avenue to be in close proximity to the sidewalk. This provision would allow the buildings to be setback from the front property and the sidewalk provided that the area between the building and the sidewalk is used for pedestrian oriented activities and prohibits this area from being used for parking.

This approach recognizes the difference between MVD and 7th Avenue which includes significantly lower volume of travel, and there is parallel parking on both sides of 7th for the entire length of the roadway. Further 7th Avenue has been designated as a priority pedestrian corridor and bike way in the 2009 Comprehensive Transportation Plan.

Designing buildings and related site improvements for pedestrians is fundamental for creating an environment that encourages walking, biking and transit use which is key component to establishing a priority pedestrian corridor.

Allowing the buildings to be set back and allowing parking lots in front of the buildings along MVD and creating a "Main Street" along 7th Avenue similar to that found in Poulsbo, Port Townsend, LaConner, and Leavenworth with buildings in close proximity to the sidewalk will facilitate a higher quality pedestrian environment in this portion of the Marina District while respecting the auto-oriented nature of Marine View Drive. This approach would also allow for quality pedestrian connections between 7th, the Marina, and Beach Park. Figure 4 of the Draft Ordinance illustrating the two different building placement environments in Downtown Commercial Zone.

- b. The prohibition against commercial vehicular access to 8th Avenue is proposed to be removed.
- c. Language is proposed to be added to authorize angled parking along Marine View Drive, provided that the follow standards are met
 - (i) The sidewalk shall be relocated within dedicated right-of-way so that the curb face of the relocated sidewalk is located as measured 36 feet from the edge of traveled way of the nearest lane of traffic on Marine View Drive.
 - (ii) The relocated sidewalk shall be entirely in right-of-way or newly dedicated right-of-way.
 - (iii) The length of relocated sidewalk shall be a minimum of 100 feet, not including any sidewalk transition areas.
 - (iv) Sidewalk transition lengths and dimensions shall be approved by City review.
 - (v) Only head-in angled parking shall be allowed within the right-of-way on Marine View Drive
- d. The prohibition against selling alcohol outside is proposed to be removed.

SECTION 6:

DMMC 18.27.060 (General Building Design Requirements) is proposed to be amended to reflect the change to the term "City Manager or designee". Additionally, the following modifications were made:

- a. The requirement that the width above the 2nd floor be reduced by 80% was removed and will be replaced by a floor area ratio (FAR) to ensure modulation and view corridors. By establishing the FAR, which is the ratio of the building area to the lot area, the massing of the building is still regulated to prevent the creation of a solid wall of buildings, but allows greater flexibility so that the modulation of the building can be done a manner that makes the most since for an individual property.
- b. A number of FARs are proposed to be established for different areas and building heights. The establishment of the FARs was based on a modeling exercise completed by staff and is identified on page 27 of the Ordinance.

- c. As part of the height bonus, a Public Benefit Incentive System is proposed to provide clear direction to future applicants about what is expected in order to obtain the height bonus. The approach is based on the approach used by Burien in the Town Center Project and can be used to clearly demonstrate what benefit the community received for the height bonus as established by Table 1 on page 29 of the Draft Ordinance.

SECTION 7

Severability Clause

SECTION 8

Effective Date – 30 Days after passage of the ordinance.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Des Moines Sign Code – Chapter
18.42 DMMC

FOR AGENDA OF: April 14, 2011

DEPT. OF ORIGIN: Planning, Building, & Public
Works

DATE SUBMITTED: April 4, 2011

ATTACHMENTS:

1. Substitute Draft Ordinance 10-117
2. Chapter 18.42 DMMC (Sign Code)

CLEARANCES:

[X] Planning, Building & Public Works 
[X] Legal 

APPROVED BY CITY MANAGER FOR
SUBMITTAL: 

Purpose and Recommendation:

The purpose of this agenda item is to consider Substitute Draft Ordinance 10-117 which amends the City's current sign code regulations. There are two primary purposes for the proposed amendments; first is to make required changes recommended by the Legal Department to address areas of the sign code that are not consistent with either State or Federal Law and the second is to make modifications to the sign code recommended by the Finance and Economic Development Committee and the Economic Development Manager to facilitate economic development within the City.

The City Council may adopt Substitute Draft Ordinance 10-117 by passing the following motion:

Suggested Motion:

"I move to adopt Substitute Draft Ordinance 10-117 amending the City's Sign Code."

Background:

A city has the right to regulate signs as a legitimate exercise of its "police power" in the same manner that it is allowed to zone or otherwise regulate the use of land. However, that power is not absolute. The city's sign regulations must still comply with the rights given by the constitutions of Washington and the United States. In order not to violate these rights, a sign ordinance must be content neutral, be narrowly tailored to serve a significant governmental interest, and must leave open ample alternative channels for communication.

In a recent Ninth Circuit decision, the Court held that the City of Redmond's sign ordinance violated Free Speech rights under the Constitution. *Ballen v. Redmond*, 466 F.3d 736 (9th Cir. 2006). In *Ballen*, the City of Redmond's sign ordinance prohibited most types of portable signs, sandwich signs, and reader-boards; however, a number of exceptions were made. The ordinance exempted, among others, political signs and real estate signs. The court struck down the ordinance stating that it was "more extensive thannecessary to serve [the City's] interest. Although the City was attempting to promote traffic safety and its overall appearance, "the City failed to show how the exempted signs reduce vehicular and pedestrian safety or besmire the community any less than the prohibited signs." Ultimately, the court held that because Redmond's ordinance placed restrictions based on the content of the signs, it was unfair and invalid under the Constitution.

Ultimately, government can prohibit or regulate the posting of signs so long as there are no exemptions which classify signs based on content. Additionally, local governments may impose reasonable "time, place and manner" restrictions on speech in order to set forth the circumstances under which signs may be displayed. Restrictions that deal with the size, illumination, location and manner of posting signs without regard to the content of the speech are examples of local government enactments likely to be sustained as reasonable time, place and manner sign regulations, provided they advance a legitimate governmental interest.

SEPA

Textual code amendments which contain substantive standards respecting the use or modification of the environment in Draft Ordinance 10-117 require SEPA evaluations. Therefore, a SEPA checklist was completed and reviewed by City staff to determine if significant adverse environmental impacts were likely. It was determined that mitigation was not warranted for this non-project action. The SEPA Official subsequently issued a final threshold decision of a Determination of Non-Significance (DNS) on January 28, 2011. The comment and appeal periods for the DNS concluded on February 14, 2011 and February 24, 2011 respectively.

APPROVAL PROCESS REQUIREMENTS

Textual code amendments are Type IV land use actions as defined by DMMC 18.56.060. Textual code amendments require a public hearing with the City Council pursuant to DMMC 18.56.180. As required by DMMC 18.60.120, the public hearing was set by Resolution 1142.

Further, the Sign Code is classified as a development regulation under the Growth Management Act as defined in RCW 36.70A.030(7); therefore amendments to the Sign Code are required to be forwarded to the Department of Commerce (formerly the known as the Department of Community, Trade and Economic Development or CTED) for review and comment by the Department and other State agencies. Pursuant to RCW 36.70A.106, this review period is a minimum of 60 days which concluded on March 29, 2011. During this comment period, the City received one comment from the Washington State Department of Transportation (WSDOT) which is addressed below in the discussion associated with Section 1 of the draft ordinance.

Discussion:

The City's Sign Code, Chapter 18.42 DMMC, was originally written in 1983 and has not been substantially updated since that time. There have been a few amendments primarily focused on a specific zone: i.e. the creation of the Pacific Ridge. However there has not been a comprehensive review of the sign code completed in the last 28 years. During that 28 year period of time there have been a number of changes in both Federal and State case law which affects the City's regulation of signs within its jurisdiction. There have also been a number of technology changes which have not been reflected in the City's sign regulations. The current Sign Code regulations are based on the type of signs, technology, and law that existed in 1983.

On January 10, 2011, the Finance and Economic Development Committee reviewed a number of proposed changes to the Sign Code to bring the sign code into compliance with Federal and State Law. In addition to those proposed changes, the committee reviewed a number of modifications to the Sign Code meant to streamline the permitting process, improve the regulations of signs in order to facilitate economic development within the City, and reflect current technologies.

On March 24, 2011, the City Council held a public hearing on Draft Ordinance 10-117 to consider a the proposed modifications to the City's Sign Code. At the time of the public hearing, the Department of Commerce's 60 day comment period had not expired and as a result the City Council could not adopt the Draft Ordinance. As a result of Commerce's comment period and the City Council's public hearing, staff has made a number of changes to the Draft Ordinance which are highlighted in yellow on the attached substitute version of the draft ordinance. Staff has prepared a section by section discussion of each of the modified sections within the attached Draft Ordinance:

SECTION 1:

In order to address comments received from the Washington State Department of Transportation during the 60 day Department of Commerce review, language was added to this section to require all banners installed over State Highways; namely Kent Des Moines Road, to comply with the requirements of Chapter 47.42 RCW (Highway Advertising Control Act) and WAC 468-95-184 (Event signs, banners, and decorations). These provisions require that all banners placed over Kent-Des Moines Road are limited to City sponsored events and are only allowed to be installed for 30 days at a time. In order to ensure compliance with these requirements, the section was also modified to require a right-of-way use permit for any banners installed in or over the right-of-way.

SECTION 2:

At the request of the City's Transportation Engineering Division, language was added to this section to prohibit electronic reader boards and changeable message centers from being placed in or over the right-of-way and to exempt traffic control devices from regulation under this section.

During the March 24, 2011 public hearing the City Council questioned if additional standards needed to be established to regulate lighting impacts associated with Electronic Reader Boards and Changeable Message Centers. Currently, DMMC 18.42.180 only regulates the luminosity of a sign and as such only regulates the amount of light created from an external light source

illuminating either the face or the back of a sign. This standard does not correctly measure or regulate the amount of light emitted from a screen whether it is a computer, television, or a changeable message center. The amount of light emitted from a screen is referred to as luminance. Based on information reviewed by staff, the section has been modified to include standards to regulate the luminance of these types of signs during both daylight and nighttime operations.

Finally, staff has modified the language in order to limit these types of signs to freestanding signs only and to clarify that the area of the message center counts towards the total freestanding sign area allowed under the sign code for a given piece of property.

SECTION 3:

At the request of the City's Transportation Engineering Division, language was added to this section to prohibit freestanding signs from being placed in or over the right-of-way and to require projecting signs (i.e. blade signs) to obtain a right-of-way permit, if the sign projects over the public right-of-way.

SECTION 7:

At the request of the City's Transportation Engineering Division, language was added to allow the City to immediately remove any sign placed in the right-of-way in violation of the standards established in this section.

Additionally, a cross reference to the standards established for portable signs within the right-of-way was added to all subsections which allow some type of temporary signs in the right-of-way to ensure the continuity of enforcement of the standards within the City.

Finally, during the public hearing City Council questioned if the new standards prohibiting handwritten portable signs would also prevent chalkboard type sign typically utilized by restaurants to advertise daily specials. Under the original version of the ordinance, these types of signs would be prohibited; therefore, the section has been modified to allow chalkboard style portable signs.

SECTION 10:

Staff proposed deleting the provision that allowed businesses in the Pacific Highway South Business District Sign Area to have off-premise signs provided that they removed off-premise signs from the Downtown Neighborhood (now Marina District) since that Sign District has been repealed under the Draft Ordinance and businesses in that area do not currently have off-premise signs in the Marina District.

SECTION 15:

As the City does not define "obsolete", staff is recommending deleting the term "obsolete". Staff believes that the regulations surrounding abandoned signs are sufficient to address the issue making the term obsolete redundant.

SECTION 20:

At the request of the City's Transportation Engineering Division, language was added to this section to prohibit freestanding signs from being placed in or over the right-of-way and to require projecting signs (i.e. blade signs) to obtain a right-of-way permit, if the sign projects over the public right-of-way.

Alternatives:

The City Council has two alternatives:

- (1) The City Council may adopt Substitute Draft Ordinance 10-117.
- (2) The City Council may make additional changes to the ordinance
- (3) The City Council may decline to act on the ordinance.

Financial Impact:

The ordinance is design to facilitate and promote economic development within the City.

Recommendation/Conclusion:

The proposed ordinance received a do pass recommendation from the City Council's Finance and Economic Development Committee.

Concurrence:

Planning, Building, and Public Works Department and Legal Department concur with the proposed ordinances.

**PLANNING, BUILDING, and PUBLIC WORK'S
SUBSTITUTE DRAFT 03/30/2011**

DRAFT ORDINANCE NO. 10-117

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the sign code; amending chapter 18.42 DMMC relating regulation of signs within the City of Des Moines.

WHEREAS, the City of Des Moines has adopted a sign code in Chapter 18.42 DMMC, the purposes of which are stated in DMMC 18.42.010, and

WHEREAS, such sign code has been in effect since 1983, and

WHEREAS, recent court rulings have called into question the legality and enforceability of certain sign code provisions relating to portable signs, real estate signs, and political signs, and

WHEREAS, Strategy 1-04-03(2) of the Des Moines Comprehensive Plan states that the City should "review and amend as appropriate the Zoning Code, Subdivision Code and other development regulations to establish development standards that are clear and predictable, that simplify the review process, and adapt to varied site or neighborhood conditions, and

WHEREAS, clear and predictable development regulations to encourage efficient permitting is a planning goal established by the Growth Management Act, and

WHEREAS, the SEPA responsible official reviewed this proposed non-project action and determined that the proposed textual code amendments are within the scope of the existing environmental document, and

WHEREAS, the textual code amendment proposed by this ordinance has been processed in accordance with the requirements of the State Environmental Policy Act (hereinafter "SEPA), a determination of non-significance was issued on January 26, 2011 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 Washington State Department of Commerce as required by RCW 36.70A.106, and

WHEREAS, the Washington State Department of Commerce comment period concluded on March 29, 2011, and

WHEREAS, the Finance and Economic Development Committee met on January 11, 2011 to review the proposed amendments to the City's Sign Code

WHEREAS, the Finance and Economic Development Committee has determined that modifications to the City's sign regulations are required to facilitate economic growth within the City, and

WHEREAS, on January 27, 2011, the City Council adopted Resolution No. 1142 setting a public hearing for March 24, 2011 to consider the amendments to the Des Moines Zoning Code described herein, and

WHEREAS, notice of the public hearing was given to the public pursuant to law, and

WHEREAS, such public hearing was held on March 24, 2011 to hear proponents and opponents, and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the amendments to the sign code contained in this ordinance are appropriate to provide a clear, concise, and legal method of enforcing the sign code to promote the health, safety, and welfare of the citizens, as well as to promote the enhancement of business and to maintain the visual environment of the City; now therefore,

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

NEW SECTION. Sec. 1. A new section is added to chapter 18.42 DMMC to read as follows:

Signs prohibited on, above, and over right-of-way.

(1) Except as provided in subsections (2) and (3) of this section, DMMC 18.42.050, Section 3 of this Ordinance, and DMMC 18.42.320, no person shall place a sign of any size or description:

- (a) On, above, or over the right-of-way of a City street;
- (b) On, above, or over the right-of-way of a state highway;
- (c) On a bridge or overpass; or
- (d) On a public or utility improvement.

(2) For a period of thirty (30) days or less, signs advertising community events sponsored by public service organizations may be placed on, above, or over the right-of-way of a City street or a state highway with the written permission of the City Manager, and an approved right-of-way permit.

(3) Banners installed over a state highway shall be subject to the requirements established by WAC 468-95-148 and Chapter 47.42 RCW. The City Manager is authorized to establish a fee schedule for labor, equipment, and materials expended from public funds for installation of banners.

(34) This section shall not apply to official traffic control devices regulatory, directional, or informational signs installed by the City Traffic Engineer, or the Setate.

NEW SECTION. Sec. 2. A new section is added to chapter 18.42 DMMC to read as follows:

Electronic Reader Board and Changeable Message Center Signs.

—Except as provided in subsection (6) of this section, all electronic Reader board signs and changeable message center signs shall comply with the following:

(1) Advertising messages on electronic reader boards and message centers may contain words, phrases, sentences, symbols, trademarks, and logos. A single message or a message segment must have a static display time of at least two seconds after moving onto the reader board or message center, with all segments of the total

message to be displayed within ten seconds. A one-segment message may remain static on the reader board or message center with no duration limit.

(2) Displays may travel horizontally or scroll vertically onto electronic reader boards or message center, but must hold in a static position for two seconds after completing the travel or scroll.

(3) Displays shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, ~~or otherwise portray graphics~~ or animation as it moves onto, is displayed on, or leaves the reader board or message center.

(4) Electronic signs requiring more than four seconds to change from one single message display to another shall be turned off during the change interval.

(5) Maximum brightness shall not exceed 5,000 nits during daylight hours when measured from the face of the sign and 500 nits from sunset to sunrise when measured from the face of the sign.

(6) Signs shall have programmable dimming capacity

(7) Audio speakers associated with signs allowed under this section are prohibited.

(8) Signs allowed under this section shall not exceed or be in addition to the total allowable freestanding sign area allowed in the various zones established in Article 5 of this Chapter.

(9) Signs allowed under this section shall not be used as wall signs and shall not be used as individual tenant signs.

(10) Electronic Reader Board and Changeable Message Center Signs shall not be placed on, above, or over the right-of-way.

(11) This section shall not apply to official traffic control devices installed by the City Traffic Engineer or the state.

NEW SECTION. Sec. 3. A new section is added to chapter 18.42 DMMC to read as follows:

Commercial Zones. The following signs are permitted in the Pacific Ridge Commercial Zone 1, Pacific Ridge Commercial Zone 2, Business Park Zone and all commercial zones abutting Pacific Highway South that are not within the Pacific Ridge Neighborhood:

(1) **Freestanding Signs.** For single business properties, multiple-tenant buildings, multiple-building complexes, and shopping centers, freestanding signs are allowed as follows:

(a) **Number of Free Standing Signs.**

(i) For building sites with up to 300 feet of street frontage, one sign is allowed.

(ii) For building sites with more than 300 feet of street frontage and having more than one vehicular access, two signs are allowed; provided that the total allowable sign area is not exceed and the signs are more than 100 feet apart.

(b) **Freestanding Sign Size.**

(i) Each sign allowed shall not exceed 80 square feet in area.

(ii) For properties with less than 80 feet of street frontage, sign area shall not exceed one square foot of sign area for each lineal foot of street frontage.

(c) Freestanding Sign Height.

(i) For Single Business Properties and Multiple Business Properties, freestanding signs shall not exceed fifteen (15) feet in height as measure from median sidewalk grade.

(ii) For Shopping Centers and Multi-Building Complexes freestanding signs shall not exceed twenty (20) feet in height as measure from median sidewalk grade.

(d) Allowed signs, sign area, or sign height may not be transferred from one street frontage to another.

(e) Off-premises signs, including but not limited to billboards, are prohibited. The City Manager or designee may approve monument signs located on a separate parcel of property within a multiple-building complex or shopping center when the following conditions exist.

(i) The multiple-building complex or shopping centers appears and functions as one building site; and

(ii) The monument sign appears and functions as an on-premises sign; and

(iii) The approval would not result in additional signs or sign area for the multiple-building complex or shopping center than would otherwise be allowed; and

(iv) All monument and wall signs within the multiple-building complex or shopping center conform to the provisions of this chapter.

(f) Freestanding signs shall not be located on, above, nor project over the public right-of-way.

(2) Wall Signs.

(a) Each single business property is permitted a total sign area not exceed one (1) square feet per lineal

foot of street frontage, up to a maximum of 100 square feet.

(b) Each multiple business property, is permitted a ~~wall signage~~total sign area not to exceed 20 square feet plus forty (40) square feet per licensed business; provided, however, that each business must be guaranteed a minimum of at least 25 square feet signage.

(c) Each multi-building complex and shopping center is permitted a ~~wall signage~~total sign area not to exceed 150 square feet plus (40) forty square feet per licensed business; provided, however, that each business must be guaranteed a minimum of at least 35 square feet signage.

(d) Except for buildings containing multiple business, wall signage shall not extend horizontally a distance greater than 50 percent of the width of the building wall on which it is displayed.

(e) Allowed wall signage is not transferable from one property to another; except within a shopping center or multi-building complex.

(f) Wall signs shall not placed higher than 35 feet above median sidewalk grade.

(g) 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.

(3) Internally illuminated signs shall be constructed using individual letters/characters, or sign cabinets with an opaque field or background so that only the individual letters/characters are illuminated.

(4) Reader Board signs and Changeable Message Center signs are permitted as per the requirements established in Section 23 of this Ordinance.

(5) Gasoline price signs shall not be located in, nor project over the public right-of-way, and shall not be portable. 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.

(6) Temporary signs shall be permitted as provided in DMMC 18.42.090 and 18.42.240.

Sec. 4. DMMC 18.42.010 and section 1 (part) of Ordinance No. 584 are amended to read as follows:

Purpose. It is the purpose of this chapter to safeguard the life, health, property, and welfare of the citizens of the ~~city~~ City by regulating and controlling the design, construction, location, use, illumination, and maintenance of signs and sign structures visible from any portion of public property or rights-of-way. The intent of the standards set forth in this chapter is:

(1) To protect the right of business to identify its premises and advertise its products through the use of signs without undue hindrance or obstruction+.

(2) To encourage the design of signs that attract and invite rather than demand the public's attention and to curb the proliferation of signs+.

(3) To encourage the use of signs that enhance the visual environment of the City+.

(4) To assure equal protection and fair treatment under the law through consistent application of the regulations and consistent enforcement.

(45) To promote the enhancement of business and residential properties and neighborhoods by fostering the erection of signs complementary to the buildings and uses to which they relate and which are harmonious with their surroundings.

Sec. 5. DMMC 18.42.040 and section 3(part) of Ordinance No. 584 is amended to read as follows:

Required. No sign shall be erected, re-erected, constructed, painted, posted, applied, altered, structurally revised, or repaired except as provided in this chapter and pursuant to a permit issued by the ~~code administrator~~ City Manager or designee. A separate permit shall be required for a sign or signs for each business entity and/or a separate permit for each group of signs or a single supporting structure installed simultaneously. Thereafter, each additional sign erected on the structure must have a separate permit.

Sec. 6. DMMC 18.42.030 and section 2 of Ordinance No. 584 as amended by section 1 of Ordinance No. 634 as amended by section 11 of Ordinance No. 1267 are amended to read as follows:

Definitions. For the purpose of this chapter, the definitions in this section apply:

(1) "Abandoned sign" means a sign that no longer correctly identifies, exhorts, or advertises any person, business, lessor, owner, product, or activity conducted or available on the premises where the sign is located.

(2) "Advertising copy" means any letters, figures, symbols, logos, or trademarks which identify or promote the sign user or any product or service; or which provides information about the sign user, the building or the products or services available.

(3) "Awning" means a cloth structure attached to, supported by, and projecting from a building and providing protection of the weather elements. Also called a "canopy."

(4) "Awning sign" means any sign which forms part of or is integrated into an awning and which does not extend beyond the limits of the awning.

(5) "Building" means a roofed and walled structure built for permanent use.

(6) "Changing message center" means an electronically controlled ~~public service time and temperature sign~~ message center ~~where with different copy changes of a public service or commercial nature are shown on the same~~ lampbank.

(7) "Comprehensive design plan" means building, design, landscaping, and signs integrated into one architectural plan, the comprehensive plan being complete in all other building, structural, and electrical requirements.

(8) "Double-faced sign" means a sign that has a sign on opposite sides of a single display surface or sign structure.

(9) "Electrical sign" means a sign or sign structure in which electrical wiring, connections and/or fixtures are used as part of the sign proper.

(10) "Facade" means the entire building front or street wall face of a building extending from the grade of the building to the top of the parapet or eaves and the entire width of the building elevation or elevations.

(11) "Flashing sign" means a sign with any portion thereof which changes light intensity or switches on and off in a constant pattern or contains moving parts or the optical illusion of motion caused by use of electrical energy or illumination.

(12) "Freestanding sign" means a sign attached to the ground and supported by uprights placed on or in the ground.

~~(13) "Front foot" means the maximum lineal dimension of an exterior wall, excluding canopies and projections, measured on a straight line parallel to a fronting street. For purposes of this definition, buildings and occupancies within a multiple building complex on a corner lot are defined as having exterior walls fronting on both streets.~~

(1413) "Frontage" means the measurement of the length of the property line along a street.

(1514) "Grade" means the elevation as measured at the relative ground level in the immediate vicinity of the sign.

(1615) "Ground sign" means a freestanding sign that is less than five feet in height.

(1716) "Incidental sign" means a small nonelectric information sign two square feet or less in area which pertains to goods, products, services, or facilities which are available on the premises where the sign occurs and is intended primarily for the convenience of the public while on those premises.

(1817) "Information sign" means a sign which gives directional information or identifies specific use areas and which is necessary to maintain the orderly internal use of the premises, such as those signs which identify employee parking, shipping, clearance, or which restrict ingress and egress. Excluded from this definition are signs which are not directly related to an identified need for orderly internal use of the property and off-premises or portable signs.

(1918) "Inspector" includes any ~~city~~ City employee working under the authority and direction of the ~~code administrator~~ City Manager or designee.

(1920) "Landscaping" means any material used as a decorative feature, such as textured concrete bases, planter boxes, rockeries, driftwood, pole covers, decorative framing, and shrubbery or planting materials, used in conjunction with a sign, which expresses the theme of the sign but does not contain advertising copy.

(2120) "Mansard roof" means a sloped roof or roof-like facade architecturally able to be treated as a building wall.

(2221) "Marquee" means a permanent structure attached to, supported by, and projecting from a building and providing protection from the weather elements, but does not include a projecting roof. For the purposes of this chapter, a freestanding permanent roof-like structure providing protection from the elements, such as a service station gas pump island, will also be considered a marquee.

(2322) "Marquee sign" means any sign which forms part of or is integrated into a marquee and which does not extend beyond the limits of the marquee.

(2423) "Monument sign" means a sign above grade which is mounted or attached to a wide base or grade. These signs are composed of a sign face and a sign base. The base and architectural detail must be consistent with the character of the primary structure.

(2524) "Multiple-building complex" means a group of structures housing at least one retail business, office, commercial venture, or independent or separate part of a business ~~or a single structure containing more than one business with separating walls and at least one outside access for each business located on different properties but which with shares a common lot, accesses, and/or parking facility facilitates.~~

(2625) "~~Multiple-tenant complex~~ Business Property" means a single property structure housing more than one retail business, office, or commercial venture, ~~which does not incorporate a separate outside access for each enterprise in a single structure;~~ but not including residential apartment buildings or shopping centers.

(2726) "Off-premises directional sign" means a sign erected for the purpose of directing pedestrian or vehicular traffic to a facility, service, or business located on other premises.

(2827) "On-premises sign" means a sign which carries only advertisements strictly applicable to a lawful use of the premises on which it is located, including signs or

sign devices indicating the business transacted, principal services rendered, and goods sold or produced on the premises, name of the business, name of the person, firm, or corporation occupying the premises.

(~~29~~28) "Perimeter" means the boundary lines used to define the extent of an area.

(~~30~~29) "Person" means any person, firm, partnership, association, corporation, company, institution, or organization.

(~~31~~30) "Pole sign" means any freestanding sign more than five feet in height that does not meet the definition of monument sign. These signs are composed of the sign cabinet or base and the sign pole or pylon by which it connects to the ground.

(~~32~~31) "Portable sign" means a sign which is not permanently affixed and is designed for or capable of being moved, except those signs explicitly designed for people to carry on their person.

(~~33~~32) "Premises" means the real estate (as a unit) which is involved by the sign or signs mentioned in this chapter.

(~~34~~33) "Projecting sign" means a sign which is attached to and projects more than one foot from a structure or building face.

(~~35~~34) "Public commercial parking area" means an open area other than a street, alley, or private parking area serving the occupants, patrons, or employees of a dwelling, hotel, business, or apartment to which the private parking area is appurtenant, which area is used for the parking of more than four automobiles.

(~~36~~35) "Reader ~~e~~Board" means a sign face designed with readily changeable letters allowing frequent changes of copy either manually or electronically.

(~~37~~36) "Real estate sign" means a portable or freestanding sign erected by the owner or his agent advertising the real estate upon which the sign is located for rent, lease, or sale or directing to the property.

(38) "Revolving sign" means a sign which rotates or turns in motion in a circular pattern.

(~~39~~37) "Roof line" means the top edge of a roof or parapet; the top line of a building silhouette.

(~~40~~38) "Roof sign" means a sign supported by and erected on or above the roof line of a building or structure.

(39) "Shopping center" means a grouping of retail business and/or service uses on a single development site consisting of 5 acres or more housed in multiple structures or a single building with common parking facilities.

(~~41~~40) "Sign" means any visual communication device, structure, or fixture which is visible from off premises and which directs attention to an object, product, place, activity, facility, service, event, attraction, person, institution, organization, business, or building. Painted wall designs or patterns which do not represent a product, service, or trademark or which do not identify the user are not considered signs.

(~~42~~41) "Sign area" means the entire area within a circle or polygon enclosing the extreme limits of the advertising message together with any frame or decoration forming an integral part of the display or used to differentiate the sign from the background against which it is placed. If the sign is composed of more than two sign cabinets or modules, the area enclosing the entire perimeter of all cabinets and/or modules within a single square or rectangular figure is the area of the sign. Multi-sided signs, signs composed of two or more sides of equal area attached to each other but occupying different planes, shall have their areas computed by excluding the area of one side from the sum of the areas of all other

sides. The total surface area of spherical or cylindrical signs is the sign area.

(4342) "Sign height" means the vertical distance from grade to the highest point of a sign or any vertical projection thereof, including its supporting columns.

(4443) "Sign structure" means any structure which supports or is designed to support any sign as defined in this chapter. A sign structure may be a single pole and may or may not be an integral part of the building.

(44) "Single Business Property" means a single structure housing one business located on a single property without shared access and/or parking facilities.

(45) "Street" means a right-of-way, dedicated to the public use, which provides vehicular access to adjacent properties.

(46) "Street frontage" means the linear frontage of a single parcel of property or common development site abutting a public street.

(47) "Temporary construction sign" means a sign jointly erected and maintained on premises undergoing construction, by an architect, contractor, subcontractor, and/or materialman, upon which property the individual is furnishing labor or material.

(48) "Temporary sign" means any sign or advertising display constructed of cloth, canvas, light fabric, paper, cardboard, or other light materials, with or without frames, intended to be displayed for a limited time only. Signs painted upon window surfaces which are readily removed by washing shall be considered temporary signs.

(49) "Under marquee sign" means a sign attached to and suspended from the underside of a marquee or canopy.

(50) "Wall sign" means a sign attached or erected parallel to and extending not more than one foot from the facade or face of any building to which it is attached and supported throughout its entire length, with the exposed face of the sign parallel to the plane of the wall or facade. Signs incorporated into mansard roofs, marquees, or canopies shall be treated as a wall sign.

Sec. 7. DMMC 18.42.050 and section 3(A) of Ordinance No. 584 as amended by section 1 of Ordinance No. 637 as amended by section 1 of Ordinance No. 1139 are amended to read as follows:

Exemptions. The following shall not require a sign permit; these exemptions shall not be construed as relieving the owner of a sign from the responsibility of its erection and maintenance and its compliance with the provisions of this chapter or any other law or ordinance regulating the same:

(1) The changing of the advertising copy or message on a lawfully erected, painted, or printed sign, theater marquee, or similar signs specifically designed for the use of replaceable copy+.

(2) Painting, repainting or cleaning of a lawfully erected sign structure or the changing of the advertising copy or message thereon and other normal maintenance unless a structural or electrical change is made+.

(3) Temporary decorations customary for special holidays, such as Christmas and Independence Day, erected entirely on private property+.

(4) Real estate signs subject to the following requirementsstandards:

(a) Signs shall not exceeding eight (8) square feet in residential zones and twenty-four (24) square feet in commercial zones.

(b) Signs shall be limited to one sign per street frontage on the premises for sale, lease,

or rent, and three portable directional signs to such property.

(c) Portable off-premises directional real estate signs providing ~~announcing~~ directions to an open house at a specified residence or commercial building that is offered for sale or rent are permitted only when:

(i) Signs are not placed on trees, foliage, utility poles, or ~~regulatory, directional, or informational signs~~ placed on or interfere with official traffic control devices and their support structures installed by the City Traffic Engineer or the State.

(ii) Each sign does not exceed four (4) square feet in area and thirty-six (36) inches in height.

(iii) The agent or seller is physically present at the property for sale or rent.

(iv) The total number of directional signs is limited to three (3).

(v) Each sign if located in the public right-of-way is placed in a manner that does not interfere with vehicle, bicycle, wheelchair, or pedestrian views or travel, subject to the requirements and regulations of item (12), e through k, of this section.

~~(vi) Signs do not block views; and~~

(vi) The signs may only be in place between during the hours of the open house.

(5) On-premises information signs guiding or directing traffic onto or off of a lot or within a lot, incidental signs, and internal information signs ~~such as "vacancy," "no soliciting,"~~ not over eight square feet in

area ~~which are non-electrical and non-illuminated,~~ and do not exceed six feet in height. The information or copy displayed by or on any internal informational sign shall be limited to only those letters and/or symbols necessary to convey the required message in as brief a manner as reasonably possible and shall not advertise in any manner the facility occupying the premises nor goods or services available nor hours of operation.

(6) Political signs subject to the following restrictions/requirements:

(a) Political signs promoting or publicizing candidates for public office or issues that are to be voted upon in a general or special election may be displayed on private property. Such signs shall be removed within ten (10) days following the election; provided, that signs promoting successful candidates in a primary election may remain displayed on private property until ten (10) days following the immediately subsequent general election.

(b) It is prohibited for any person to paste, paint, affix, or fasten a political sign on any tree, foliage, utility pole, ~~or~~ on any public building or structure, or on or interfere with any official traffic control device and their support structures installed by the City Traffic Engineer or the State.

(c) Political signs ~~may be~~ posted within public right-of-way are subject to the requirements and regulations of item (12), e through k, of this section. ~~only if the signs do not create a traffic obstruction or hazard.~~ Additionally, signs shall not be located in a manner that interferes with vehicle, bicycle, wheelchair, or pedestrian views or travel. Signs shall not be placed in the street median. Additionally, political signs in the right-of-way are limited to a maximum surface area of four (4) square feet and a maximum height of five (5) feet.

(d) It shall be the responsibility of the candidate to have the signs removed.

- (7) One nonelectrical and non-illuminated business identification sign containing no advertising matter over four square feet in area, which is permanently affixed on a plane parallel to a wall.

- (8) One on-premises non-illuminated bulletin board not over twelve (12) square feet in area for a charitable or religious organization.

- (9) For each street frontage of the premises, one non-illuminated temporary construction sign denoting the architect, engineer, and/or contractor when placed on work under construction, and not exceeding thirty-two (32) square feet in area.

- (10) Memorial signs or tablets, including names of buildings, and date of erection when cut into a masonry surface or when constructed of bronze or other noncombustible materials.

- (11) Non-electrical identification signs which contain no more than the name and address of the dweller or tenant of a residence shall be allowed. Only one such sign not over two square feet in area shall be allowed for each street frontage of a residential dwelling within the city.

(12) Portable signs located in the public right-of-way subject to the following requirements-standards:

- (a) Signs shall may not be affixed to the ground, including through the use of stakes or other means that may damage property.

- (b) No more than two (2) signs are allowed per business and no person may have more than two (2) signs at any one (1) time.

(c) Sign area shall neither exceed six (6) square feet per sign face nor thirty-six (36) inches in height.

(d) Signs are allowed only during the hours of operation of the business or for the duration of special events and must be taken indoors each day.

(e) Signs may not be placed on or attached to other objects, including but not limited to buildings, structures, trees, plants, utility poles, utility boxes, utility equipment, or other signs, or on or interfere with any official traffic control device and their support structures installed by the City Traffic Engineer or the State.

(f) Signs shall not be placed in a manner that interferes with vehicle, bicycle, wheelchair, or pedestrian sight line views, or travel.

(g) Signs shall not be placed in street medians or traffic islands.

(h) Signs shall not be placed in a manner that will damage City landscaping, irrigation or other City infrastructure or obstruct a drainage system. Any damage as the result of the placement of the portable will be the responsibility of the owner of the sign.

(i) Signs shall not be handwritten, and must be typed or professionally prepared and maintained in good condition so as to preserve the aesthetic value of the total environment.

(j) Signs shall have a name and contact phone number or other contact information on them.

(k) Signs placed in violation of this subsection are subject to immediate removal and destruction by the City, without prior notice. If the owner of the sign is present at the time of removal, the owner is given an opportunity to remove the sign immediately.

(123) Signs used exclusively for:

(a) Display of official notices used by any court, public body, or official, or for the posting of notices by any public officer in the performance of a public duty, or by any person in giving legal notice, provided however that such notices are subject to the requirements and regulations of subsection (12), e through k, of this section.

(b) Official directional, warning, or information signs of a public or semipublic nonprofit entity erected by or with the approval of the ~~city~~City; provided, however, the design and placement of such signs shall be subject to the approval of the ~~superintendent of public works in consultation with the community development department~~City Manager or designee and if located in the public Right-of-Way, shall require a Right-of-Way Use Permit and shall be subject to the requirements and regulations of subsection (12), e through k, of this ~~section if located within the Right-of-Way~~. All such signs shall be installed by or under the direction of the ~~city department of public works~~City Manager or designee and may be removed by the ~~department of public works~~City if they become damaged, unsightly, or otherwise fall into a state of disrepair. Upon such removal, replacement signs may be installed. The ~~city~~City manager Manager is authorized to establish a fee schedule for labor, equipment, and materials expended from public funds for installation of signs and/or posts.

(14) Official tTraffic control devices and their support structures directional and warning signs installed by the City Traffic Engineer or Statea government entity.

(15) Signs not intended to be viewed from and not readable from off premises.

(16) Window merchandise displays.

(17) Point-of-purchase advertising displays, such as product dispensers.

(18) National flags, flags of political subdivisions and symbolic flags of an institution.

(19) Barber poles.

(20) Historic site markers and plaques.

(21) Gravestones.

(22) Structures intended for separate use, such as phone booths.

(23) Identification signs upon recycling collection containers or other collection containers for public, charitable or nonprofit organizations.

(24) Lettering or symbols painted directly onto or flush-mounted magnetically onto an operable motor vehicle operating in the normal course of business.

(25) Sculptures, fountains, mosaics, or other public art features that do not incorporate advertising or identification of a business or product.

(26) Temporary construction signs subject to the following standards:

(a) Sign shall not exceed 32 square feet.

(b) No more than one sign is allowed per street frontage.

(c) Sign shall be removed upon completion of the project, except as provided in DMMC 18.42.120.

Sec. 8. DMMC 18.42.060 and section 3(B) of Ordinance No. 584 is amended to read as follows:

Application. Applications for sign permits shall be made to the ~~code administrator~~ City Manager or designee upon ~~building permit~~ forms provided by the City.

(1) Applications for sign permits shall be accompanied by:

(a) Two site (plat) plans showing the location of the affected lot, building or buildings, and sign or signs, showing both existing signs and awnings and the proposed sign;

(b) Two copies of a scale drawing of the proposed sign or sign revision, including size, height, copy, structural and footing details, material specifications, methods of attachment, illumination, landscaping, front and end views of awning, sample of canvas, calculations for dead load and wind pressure, photograph of site and building marked to show where sign or awning is proposed, and any other information required to ensure compliance with appropriate laws;

(c) Written consent of the owner of the building, structure, or property where the sign is to be erected;

(d) A permit fee as set by written administrative directive.

(2) Exceptions.

(a) The ~~code administrator~~ City Manager or designee may waive submission of plans and specifications when the structural aspect is of minor importance.

(b) If the sign to be installed is to replace a nonconforming sign, the permit and plan check fees may be waived at the discretion of the ~~code administrator~~ City Manager or designee.

Sec. 9. DMMC 18.42.070 and section 3(C) of Ordinance No. 584 is amended to read as follows

Inspections.

(1) All signs controlled by this chapter are subject to periodic inspection by the ~~code administrator~~ inspector. The ~~code administrator~~ inspector

shall keep records reflecting inspection dates and results thereof.

(2) Footing inspections shall be made by the ~~code administrator~~inspector for all signs having footings.

(3) Every new sign shall bear the permit number and date of issue prominently and permanently affixed.

(4) Every temporary sign requiring a permit shall bear a legible notation of its expiration date.

(5) If the inspector is required to reinspect a new installation due to no fault of ~~his~~the inspector's own, a reinspection fee shall be charged in accordance with administration directive.

Sec.10. DMMC 18.42.090 and section 3(E) of Ordinance No. 584 as amended by section 1 of Ordinance No. 873 as amended by section 2 Ordinance No. 1139 are amended to read as follows

Special use permits. The ~~community development department~~City Manager or designee is authorized to grant a special use permit for the following purposes:

(1) Temporary signs, banners and/or posters not exceeding 40 square feet, strings of pennants, ribbons, flags, streamers, balloons, spinners, or other devices of a carnival nature may be permitted for temporary or special events, such as a grand opening, but such use shall not exceed 45 days within a three-month period. No more than three types of temporary signs may be displayed at any one time.

(2) Temporary signs exceeding 40 square feet but not exceeding 200 square feet may be permitted for temporary or special events, such as a grand opening, but such use shall not exceed 45 days. Only five such permits shall be issued to any business during a calendar year. The total aggregate of temporary signs shall be no more than 400 square feet.

(3) Inflatable displays exceeding 40 square feet and searchlights may be permitted for temporary or special events, such as a grand opening, but such use shall not exceed 10 days. Only three such permits shall be issued to any business during a calendar year.

~~(4) Off-premises signs in the Pacific Highway South business district. Such permit may be granted in consideration of the removal of off-premises signage in the downtown business district.~~

(45) Off-premises directional signs advertising group sales of single-family residences or condominiums; provided, the following conditions shall apply:

(a) Each sign permitted under this section may contain two sign faces, each of which is no larger than 16 square feet, and no more than two signs per group sale shall be permitted;

(b) The maximum height of any such sign shall be eight feet from grade;

(c) The maximum duration of any such sign shall be 90 days or whenever the property advertised in the sign is sold, whichever occurs first; provided, the special permit may be renewed and reissued for additional 90-day periods if the property advertised in the sign has not been sold.

(d) An applicant who is granted a permit under this section shall relinquish the general privilege to place three off-premises directional signs per property under the provisions of DMMC 18.42.050(4) and ~~DMMC 18.42.220~~ but shall be permitted to place an additional three off-premises directional signs for the entire group sale; provided, such signs comply with the requirements in DMMC 18.42.050(4).

Sec. 11. DMMC 18.42.100 and section 3(F) of Ordinance No. 584 is amended to read as follows:

~~**Application - Generally Purpose.** Application may be made to the community development department for special consideration whereby deviations from the~~The requirements and restrictions of this chapter may be permitted modified by the City Manager or designee when an applicant is using a comprehensive design plan to integrate signs into the framework of the building or buildings, landscaping, and other design features of the property, utilizing an overall design theme. Comprehensive design may be used on an existing building where the facade is being altered, new construction or in freestanding signs. ~~The exception in this article is based on an exceptional effort toward creating harmony between the sign, the building, and the site where it is located through use of a consistent design theme which complements and enhances the surrounding development and natural beauty of the area.~~

Sec. 12. DMMC 18.42.110 and section 3(F)(1) of Ordinance No. 584 is amended to read as follows:

Application - Supplementary material. Applications for comprehensive design plan permits shall be submitted ~~to the code administrator on forms provided by the city~~ City Manager or designee and shall be accompanied by the following:

(1) A narrative describing the proposed plan, including, but not limited to, the following information:

(a) How the physical components of the sign structure relate to the copy area, detailing legibility and readability factors based on traffic speed, sign placement, and letter size;

(b) How the sign(s) relate to the immediate surroundings, including buildings, other signs, landscaping, and other decorative features;

(c) How the sign or signs relate to the desired land use characteristics promoted by the comprehensive plan and this chapter ~~and the natural beauty within and surrounding the city;~~

(d) How the elements and design of the sign(s) promote and enhance the overall design theme established by the adopted design guidelines for the Marina District or the Pacific Ridge Neighborhood of the city;

(e) Evaluation of potential adverse effects on adjacent property.

(2) A site plan and colored renderings of the sign(s) and building faces on which the signs will be mounted. Graphic submittals shall illustrate how the total sign proposal will appear from the street(s) from which the signage is intended to be seen.

(3) Regular sign permit application.

Sec. 13. DMMC 18.42.120 and section 3(F)(2) of Ordinance No. 584 is amended to read as follows:

Criteria for granting. ~~In evaluating the proposed plan, the community development department The City Manager or designee shall employ the following criteria when evaluating the proposed comprehensive signage plan;~~

(1) Whether the proposal manifests an exceptional effort toward creating visual harmony between the sign, buildings, and other components of the subject property through the use of a consistent design theme;

(2) Whether the sign or signs promote the planned land use in the area of the subject property and enhance the aesthetics of the surrounding area;

(3) Whether the sign placement and size obstructs or interferes with any other signs or property in the area or obstructs natural or scenic views;

(4) Whether the proposed sign or signs is/are better coordinated, more harmonious with surrounding development including other signage and the architectural concepts

employed in the building's site then could be installed under existing criteria in this chapter;

~~(5) In the downtown Des Moines business district, whether the proposal promotes the city's contemporary northwest nautical theme through use of the following:~~

~~(a) Restrained use of nautical design features in the sign design, including but not limited to: ships, sails, fish, whales, water, international signal flags, seabirds, and seashells; or~~

~~(b) Use of piling, ropes, and other nautical elements integrated into the sign structure to provide a waterfront village appearance; or~~

~~(c) Use of wood-carved signs. The contemporary northwest nautical theme is based on Des Moines' waterfront village history and is not a nautical theme of cute artifact.~~

Sec. 14. DMMC 18.42.130 and section 4(part) of Ordinance No. 584 as amended by section 3 of Ordinance No. 1237 are amended to read as follows:

Applicability. The regulations in ~~DMMC 18.42.140 through 18.42.270~~Article IV shall apply in all zones and to all signs governed by this chapter, subject to the specific regulations of each zone.

Sec. 15. DMMC 18.42.150 and section 4(B) of Ordinance No. 584 are amended to read as follows:

Prohibited signs. The following signs are prohibited:

(1) Abandoned or obsolete signs;

(2) Signs or sign structures, which by coloring, shape, wording, or location resemble or conflict with official traffic-control signs or devices;

(23) Signs that create a safety hazard for pedestrian, wheelchair, bicycle, or vehicular traffic;

(34) All flashing signs, except changing message centers;

(4) Portable signs;

(5) Signs attached to or placed on a vehicle or trailer parked on public or private property or public Right-of-Way; provided, however, that this provision shall not be construed as prohibiting the identification of a firm or its products on a vehicle operating during the normal course of business. Franchised Public transit vehicles buses and taxis are exempt from this provision;

(6) Off-premises signs, except real estate signs, political signs, and/or portable signs as expressly allowed in DMMC 18.42.050, public service/civic event signs, garage sale signs, and off-premises signs permitted by special use permit as provided in DMMC 18.42.090;

(8) Any sign affixed to or painted on trees, rocks, or other natural features, or utility poles and the like including advertising signs affixed to or painted on fences;

(8) Roof signs;

(9) All portable ~~Reader~~ Board signs;

(10) Strings of pennants, banners, posters, ribbons, streamers, balloons, spinners, searchlights, or other devices of a carnival nature, except as provided in DMMC 18.42.090;

(11) Home occupation signs.

(13) Any sign that is not specifically permitted by this chapter.

Sec. 16. DMMC 18.42.270 and section 4(N) of Ordinance No. 584 are amended to read as follows:

Placement. All signs, except real estate directional signs, political signs, and portable signs expressly approved ~~allowed~~ under DMMC 18.42.050 ~~(12)~~, and off-premises signs approved under DMMC 18.42.090, must be located on the premises of the business that they advertise. Advertising signs located on premises other than the premises of the business they advertise are forbidden, notwithstanding single ownership of more than one premises, except where the premises are contiguous. For the purposes of this section "contiguous" means that such buildings are joined and/or interior access provided from one to the other. ~~No sign may be located in a public right-of-way.~~

Sec. 17. DMMC 18.42.290 and section 5(A) of Ordinance No. 584 as amended by section 5 of Ordinance No. 1267 are amended to read as follows:

Applicability. In addition to the provisions in Article IV, the regulations in ~~DMMC 18.42.290 through 18.42.325~~ Article V ~~will~~ shall apply within the various zones.

Sec. 18. DMMC 18.42.290 and section 5(A) of Ordinance No. 584 as amended by section 5 of Ordinance No. 1267 are amended to read as follows:

Residential. The following signs are permitted in all residential zones:

(1) One (1) nonelectrical identification sign per street frontage not exceeding two (2) square feet which contains no more than the name and address of the dweller or tenant of the residence;

(2) One (1) nonelectric identification sign per entrance to a subdivision; providing, that the sign does not exceed twenty-four (24) square feet in area;

(3) Except in the PR-R zone where a wall sign for a nonresidential use within a mixed-use development may be illuminated, one (1) nonelectric identification sign, not exceeding (twenty-four) (24) square feet, per street frontage for nonresidential uses allowed in the residential zones;

(4) Community centers, schools, and churches are permitted one readerboard sign not exceeding twenty-four (24) square feet, not exceeding eight (8) feet in height;

(5) Temporary signs not exceeding sixteen (16) square feet per street frontage for nonresidential uses in a residential zone;

(6) In areas zoned for multiple-family residences, other than duplexes, one nonelectric identification sign not exceeding twenty-four (24) square feet per street frontage and appropriate to the architectural design and landscape;

(7) In the PR-R zone, onsite real estate signs for the individual dwellings shall be displayed together within or on a sign cabinet or display board. One (1) display cabinet or board shall be allowed per street frontage;

(8) No pole signs shall be permitted and monument signs may not exceed ten (10) feet in height except by special use permit. No off-premises signs shall be permitted except real estate directional signs are permitted as authorized by this chapter.

(9) Internally illuminated signs shall be constructed using individual letters/characters, or sign cabinets with an opaque field or background so that only the individual letters/characters are illuminated.

Sec. 19. DMMC 18.42.300 and section 5(B) of Ordinance No. 584 amended by section 2 of Ordinance No. 1237 is each amended to read as follows:

Neighborhood commercial Commercial zone
Zones. (N-C) The following signs are permitted in
the Nneighborhood Ceommercial Zone (N-C) and
commercially zoned properties located in the
Redondo Neighborhood:

(1) One nonelectrical and nonilluminated business identification sign containing no advertising matter more than four square feet in area which is permanently affixed to a wall;

(2) Total sign area for a single business shall not exceed one square foot per lineal foot of street frontage up to a maximum of 100 square feet and freestanding signs may not exceed 40 square feet. No freestanding sign shall exceed the height of the primary use structure;

(3) Revolving Signs that rotate or have
rotating or moving parts are prohibited;

(4) Temporary signs are permitted as provided in DMMC 18.42.050 and DMMC 18.42.240;

(5) Projecting signs are prohibited.

Sec. 20. DMMC 18.42.320 and section 5(D) of Ordinance No. 584 is amended to read as follows:

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

~~in all commercial zones within the district defined by South 216th Street on the north, South 232nd Street on the south, 10th Avenue South on the east, and Puget Sound on the west:~~

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

~~(2) Signs that rotate or have rotating or moving part(s), are prohibited~~Reader Board signs and Changeable Message Center signs are permitted as per the requirements established in Section 23 of this Ordinance.

(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. and freestanding signs may not exceed 18 feet in height; however, under no circumstance shall a freestanding sign exceed the height of the primary use structure.

(4) Freestanding signs may not exceed 15 feet in height as measured from the sidewalk grade, and shall not be located on, above, nor project over the public right-of-way.

(5) No more than one freestanding 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 is allowed one additional freestanding sign; provided that the total allowable sign area is not exceed and the signs are over 100 feet apart.

(45) 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. ~~Businesses~~

~~housed in multiple-tenant buildings or within a multiple-building complex are subject to the regulations pertaining to such buildings or complexes.~~

~~(5) Each multiple-tenant building is permitted one freestanding sign not to exceed 100 square feet in area. Total sign area for the property may not exceed two square feet per lineal foot of street frontage up to a maximum of 250 square feet.~~

(6) Each ~~multiple-building complex~~ 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 ~~the complex~~ shall be permitted a wall sign not to exceed one square foot per lineal foot of ~~wallof~~ street frontage; provided, however, that each business must be guaranteed a minimum of ~~shall be permitted at least 32-24~~ square feet regardless of wall ~~frontage~~ street frontage.

(7) Gasoline price signs shall not be located in, nor project over the public right-of-way, and shall not be hand written. 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.

(78) Temporary signs shall be permitted as provided in DMMC 18.42.050 and DMMC 18.42.240.

~~(8) All signs in this district must be approved by the community development department to ensure that the sign promotes the city's northwest nautical theme as described in DMMC 18.42.120(5).~~

Sec. 21. DMMC 18.42.340 and section 6(A) of Ordinance No. 584 as amended by section 1 of Ordinance No. 791 are amended to read as follows:

Removal of unlawful signs-Notice. The ~~code administrator~~City Manager or designee may order the removal of any sign erected, installed, or maintained in violation of this chapter. The expression "code administrator" shall include any City employee acting under the direction of the ~~code administrator~~.

(1) **Signage, General.** Any property owner or occupant erecting or maintaining signage not in compliance with the provisions of this chapter, except portable signs which are regulated in subsection (2) of this section, shall be given written notice, by certified letter, specifying the violation and a direction to correct the violation or remove the sign within 30 days. Such notice shall be given to the holder of the sign permit or, if no permit exists, to the named owner of the land where the sign is erected. In the event the violation is not corrected within the 30-day period, the ~~code administrator~~City Manager or designee shall thereupon revoke the permit and remove, or cause the removal of the sign, and shall assess all costs and expenses incurred against the named owner of the sign and/or named owner of the land. Any sign which is a source of immediate peril to persons or property may be removed summarily and without notice. Alternatively, this subsection may be enforced pursuant to chapter 18.72 DMMC.

(2) **Portable Signage.** Portable signage includes any sign not permanently affixed; real estate signs; political signs; portable readerBoard signs; streamers; pennants; banners; signs attached to or mounted on trees, fences, utility poles, or vehicles parked in proximity to a business with the purpose of attracting attention to such business; or any similar signs. Except as provided for in Section DMMC 18.42.050(12)(k), pPortable signs in violation of this chapter located on-site must be

removed upon 24-hour notice. Such notice shall be given by delivering a written notice of violation to the owner, occupant, or person ostensibly in charge or control of the real property upon which the sign is located. Such notice shall state the violation and shall require that the violation be corrected within twenty-four (24) hours. In the event the violation is not corrected within twenty-four (24) hours, the ~~code administrator~~City Manager or designee shall cause the sign or signs to be impounded. If the portable sign is located off site of the premises to which the sign reasonably relates, or if ownership of the sign cannot be reasonably determined, no notice of violation shall be provided and the sign shall be impounded forthwith. In the event a sign is removed, there shall be a removal fee ~~of \$10.00~~ and a storage fee ~~of \$2.50 per day or fraction of a day~~ as set by Administrative Order of the City Manager. No sign shall be returned until the removal and storage fee is paid in full. The sign shall be stored for not less than ten (10) days, and thereafter the ~~code administrator~~City Manager or designee shall dispose of the sign in any manner. No cause of action shall be maintained against the ~~city~~City for damage to signs properly impounded, whether such damage occurred during the impoundment or storage. A second violation occurring within a 12-month period shall be consider a Class 1 civil infraction. A third violation ~~of this subsection~~ occurring within a 12-month period shall result in a criminal prosecution and immediate impoundment of the sign without notice. This enforcement provision supersedes the processes contained in DMMC 18.72.060, and provides for immediate prosecution pursuant to DMMC 18.72.070. For such repeat offenses sign alteration or substitution shall be no defense.

Sec. 22. DMMC 18.42.350 and section 6(C) of Ordinance No. 584 as amended by section 8 of Ordinance No. 1267 are amended to read as follows

Nonconforming signs

(1) Nonconforming signs that were legally and permanently installed prior to ~~December 19, 1983~~ February 24, 2011, shall be allowed to continue in use so long as they are continuously maintained, are not relocated, are not structurally altered or made more nonconforming in any way. ~~However, no permit shall be issued for a new freestanding or wall sign as long as any nonconforming signs exist on that property.~~

(2) Nonconforming off-premises signs shall be abated in accordance with DMMC 18.48.090

NEW SECTION Sec. 23. Repealer.

(1) The previously codified provisions of Chapter 12.16 DMMC are repealed, and:

(a) Section 1 of Ordinance No. 542 as amended by section 1 of Ordinance No. 1079;

(b) Section 2 of Ordinance No. 542 as amended by section 2 of Ordinance No. 1079;

(c) Section 3 of Ordinance No. 1079; and

(d) Section 4 of Ordinance No. 542 as amended by section 51 of Ordinance No. 1009 as amended by section 4 of Ordinance No. 1079 are each repealed.

(2) DMMC 18.42.020 and section 1(part) of Ordinance No. 584

(3) DMMC 18.42.220 and section 4(I) of Ordinance No. 584

(4) DMMC 18.42.230 and section 4(J) of Ordinance No. 584

(5) DMMC 18.42.240 and section 4(K) of Ordinance No. 584 as amended by section 3 of Ordinance 1139

(6) DMMC 18.42.260 and Section 4(M) of Ordinance 584

(7) DMMC 18.42.310 and section 5(C) of Ordinance No. 584 as amended by section 6 of Ordinance No. 1267.

(8) DMMC 18.42.325 and section 10 of Ordinance No. 920.

(9) DMMC 18.42.327 and section 7 of Ordinance No. 1267

(10) DMMC 18.42.330 and Section 6(part) of Ordinance No. 584.

(11) DMMC 18.42.370 and Section 6(B) of Ordinance No. 584

NEW SECTION Sec. 24. Codification.

(1) Section 1 of this ordinance shall be codified as a new section in Article IV of chapter 18.42 DMMC entitled "**Signs prohibited over right-of-way.**"

(2) Section 2 of this ordinance shall be codified as a new section in Article IV of chapter 18.42 DMMC entitled "**Electronic Reader Board and Message Center Signs.**"

(3) Section 3 of this ordinance shall be codified as a new section after DMMC 18.42.300 and before DMMC 18.42.320 in Article V of chapter 18.42 DMMC entitled "**Commercial Zones.**"

Sec. 25. 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.

Ordinance No. ____
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Sec. 26. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of ____, 2011 and signed in authentication thereof this ____ day of ____, 2011.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Chapter 18.42
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ARTICLE I. GENERAL PROVISIONS

18.42.010 Purpose.

It is the purpose of this chapter to safeguard the life, health, property, and welfare of the citizens of the city by regulating and controlling the design, construction, location, use, illumination, and maintenance of signs and sign structures visible from any portion of public property or rights-of-way. The intent of the standards set forth in this chapter is:

- (1) To protect the right of business to identify its premises and advertise its products through the use of signs without undue hindrance or obstruction;
- (2) To encourage the design of signs that attract and invite rather than demand the public's attention and to curb the proliferation of signs;
- (3) To encourage the use of signs that enhance the visual environment of the city;
- (4) To promote the enhancement of business and residential properties and neighborhoods by fostering the erection of signs complementary to the buildings and uses to which they relate and which are harmonious with their surroundings. [Ord. 584 § 1(part), 1983.]

18.42.020 Exceptions.

This chapter shall not regulate traffic and directional signs installed by a government entity; signs not intended to be viewed from and not readable from off premises; window merchandise displays; point-of-purchase advertising displays, such as product dispensers; national flags and flags of political subdivisions; symbolic flags of an institution; legal notices required by law; barber poles; historic site plaques; gravestones; structures intended for separate use, such as phone booths, Goodwill containers and recycling containers; lettering or symbols painted directly onto or flush-mounted magnetically onto an operable motor vehicle operating in the normal course of business. [Ord. 584 § 1(part), 1983.]

18.42.030 Definitions.

For the purpose of this chapter, the definitions in this section apply:

- (1) "Abandoned sign" means a sign that no longer correctly identifies, exhorts, or

advertises any person, business, lessor, owner, product, or activity conducted or available on the premises where the sign is located.

(2) "Advertising copy" means any letters, figures, symbols, logos, or trademarks which identify or promote the sign user or any product or service; or which provides information about the sign user, the building or the products or services available.

(3) "Awning" means a cloth structure attached to, supported by, and projecting from a building and providing protection of the weather elements. Also called a "canopy."

(4) "Awning sign" means any sign which forms part of or is integrated into an awning and which does not extend beyond the limits of the awning.

(5) "Building" means a roofed and walled structure built for permanent use.

(6) "Changing message center" means an electronically controlled public service time and temperature sign message center where different copy changes of a public service nature are shown on the same lampbank.

(7) "Comprehensive design plan" means building, design, landscaping, and signs integrated into one architectural plan, the comprehensive plan being complete in all other building, structural, and electrical requirements.

(8) "Double-faced sign" means a sign that has a sign on opposite sides of a single display surface or sign structure.

(9) "Electrical sign" means a sign or sign structure in which electrical wiring, connections and/or fixtures are used as part of the sign proper.

(10) "Facade" means the entire building front or street wall face of a building extending from the grade of the building to the top of the parapet or eaves and the entire width of the building elevation or elevations.

(11) "Flashing sign" means a sign with any portion thereof which changes light intensity or switches on and off in a constant pattern or contains moving parts or the optical illusion of motion caused by use of electrical energy or illumination.

(12) "Freestanding sign" means a sign attached to the ground and supported by uprights placed on or in the ground.

(13) "Front foot" means the maximum lineal dimension of an exterior wall, excluding canopies and projections, measured on a straight line parallel to a fronting street. For purposes of this definition, buildings and occupancies within a multiple building complex on a corner lot are defined as having exterior walls fronting on both streets.

(14) "Frontage" means the measurement of the length of the property line along a street.

(15) "Grade" means the elevation as measured at the relative ground level in the immediate vicinity of the sign.

(16) "Ground sign" means a freestanding sign that is less than five feet in height.

(17) "Incidental sign" means a small nonelectric information sign two square feet or less in area which pertains to goods, products, services, or facilities which are available on the premises where the sign occurs and is intended primarily for the convenience of the public while on those premises.

(18) "Information sign" means a sign which gives directional information or identifies specific use areas and which is necessary to maintain the orderly internal use of the premises, such as those signs which identify employee parking, shipping, clearance, or which restrict ingress and egress. Excluded from this definition are signs which are not directly related to an identified need for orderly internal use of the property and off-premises or portable signs.

(19) "Inspector" includes any city employee working under the authority and direction of the code administrator.

(20) "Landscaping" means any material used as a decorative feature, such as textured concrete bases, planter boxes, rockeries, driftwood, pole covers, decorative framing, and shrubbery or planting materials, used in conjunction with a sign, which expresses the theme of the sign but does not contain advertising copy.

(21) "Mansard roof" means a sloped roof or roof-like facade architecturally able to be treated as a building wall.

(22) "Marquee" means a permanent structure attached to, supported by, and projecting from a building and providing protection from the weather elements, but does not include a projecting roof. For the purposes of this chapter, a freestanding permanent roof-like structure providing protection from the elements, such as a service station gas pump island, will also be considered a marquee.

(23) "Marquee sign" means any sign which forms part of or is integrated into a marquee and which does not extend beyond the limits of the marquee.

(24) "Monument sign" means a sign above grade which is mounted or attached to a wide base or grade. These signs are composed of a sign face and a sign base. The base and architectural detail must be consistent with the character of the primary structure.

(25) "Multiple-building complex" means a group of structures housing at least one retail business, office, commercial venture, or independent or separate part of a business or a single structure containing more than one business with separating walls and at least one outside access for each business which shares a common lot, access, and/or parking facility.

(26) "Multiple-tenant complex" means a single structure housing more than one retail business, office, or commercial venture, which does not incorporate a separate outside access for each enterprise; but not including residential apartment buildings.

(27) "Off-premises directional sign" means a sign erected for the purpose of directing pedestrian or vehicular traffic to a facility, service, or business located on other premises.

(28) "On-premises sign" means a sign which carries only advertisements strictly

applicable to a lawful use of the premises on which it is located, including signs or sign devices indicating the business transacted, principal services rendered, and goods sold or produced on the premises, name of the business, name of the person, firm, or corporation occupying the premises.

(29) "Perimeter" means the boundary lines used to define the extent of an area.

(30) "Person" means any person, firm, partnership, association, corporation, company, institution, or organization.

(31) "Pole sign" means any freestanding sign more than five feet in height that does not meet the definition of monument sign. These signs are composed of the sign cabinet or base and the sign pole or pylon by which it connects to the ground.

(32) "Portable sign" means a sign which is not permanently affixed and is designed for or capable of being moved, except those signs explicitly designed for people to carry on their person.

(33) "Premises" means the real estate (as a unit) which is involved by the sign or signs mentioned in this chapter.

(34) "Projecting sign" means a sign which is attached to and projects more than one foot from a structure or building face.

(35) "Public commercial parking area" means an open area other than a street, alley, or private parking area serving the occupants, patrons, or employees of a dwelling, hotel, business, or apartment to which the private parking area is appurtenant, which area is used for the parking of more than four automobiles.

(36) "Readerboard" means a sign face designed with readily changeable letters allowing frequent changes of copy.

(37) "Real estate sign" means a portable or freestanding sign erected by the owner or his agent advertising the real estate upon which the sign is located for rent, lease, or sale or directing to the property.

(38) "Revolving sign" means a sign which rotates or turns in motion in a circular pattern.

(39) "Roof line" means the top edge of a roof or parapet; the top line of a building silhouette.

(40) "Roof sign" means a sign supported by and erected on or above the roof line of a building or structure.

(41) "Sign" means any visual communication device, structure, or fixture which is visible from off premises and which directs attention to an object, product, place, activity, facility, service, event, attraction, person, institution, organization, business, or building. Painted wall designs or patterns which do not represent a product, service, or trademark or which do not identify the user are not considered signs.

(42) "Sign area" means the entire area within a circle or polygon enclosing the extreme

limits of the advertising message together with any frame or decoration forming an integral part of the display or used to differentiate the sign from the background against which it is placed. If the sign is composed of more than two sign cabinets or modules, the area enclosing the entire perimeter of all cabinets and/or modules within a single square or rectangular figure is the area of the sign. Multi-sided signs, signs composed of two or more sides of equal area attached to each other but occupying different planes, shall have their areas computed by excluding the area of one side from the sum of the areas of all other sides. The total surface area of spherical or cylindrical signs is the sign area.

(43) "Sign height" means the vertical distance from grade to the highest point of a sign or any vertical projection thereof, including its supporting columns.

(44) "Sign structure" means any structure which supports or is designed to support any sign as defined in this chapter. A sign structure may be a single pole and may or may not be an integral part of the building.

(45) "Street" means a right-of-way, dedicated to the public use, which provides vehicular access to adjacent properties.

(46) "Street frontage" means the linear frontage of a single parcel of property abutting a public street.

(47) "Temporary construction sign" means a sign jointly erected and maintained on premises undergoing construction, by an architect, contractor, subcontractor, and/or materialman, upon which property the individual is furnishing labor or material.

(48) "Temporary sign" means any sign or advertising display constructed of cloth, canvas, light fabric, paper, cardboard, or other light materials, with or without frames, intended to be displayed for a limited time only. Signs painted upon window surfaces which are readily removed by washing shall be considered temporary signs.

(49) "Under marquee sign" means a sign attached to and suspended from the underside of a marquee or canopy.

(50) "Wall sign" means a sign attached or erected parallel to and extending not more than one foot from the facade or face of any building to which it is attached and supported throughout its entire length, with the exposed face of the sign parallel to the plane of the wall or facade. Signs incorporated into mansard roofs, marquees, or canopies shall be treated as a wall sign. [Ord. 1267 § 11, 2000; Ord. 584 § 2, 1983.]

ARTICLE II. PERMITS

18.42.040 Required.

No sign shall be erected, re-erected, constructed, painted, posted, applied, altered, structurally revised, or repaired except as provided in this chapter and pursuant to a permit issued by the code administrator. A separate permit shall be required for a sign or signs for each business entity and/or a separate permit for each group of signs or a single supporting structure installed simultaneously. Thereafter, each additional sign erected on the structure must have a separate permit. [Ord. 584 § 3(part), 1983.]

18.42.050 Exemptions.

The following shall not require a permit; these exemptions shall not be construed as relieving the owner of a sign from the responsibility of its erection and maintenance and its compliance with the provisions of this chapter or any other law or ordinance regulating the same:

- (1) The changing of the advertising copy or message on a lawfully erected, painted, or printed sign, theater marquee, or similar signs specifically designed for the use of replaceable copy;
- (2) Painting, repainting, or cleaning of a lawfully erected sign structure or the changing of the advertising copy or message thereon and other normal maintenance unless a structural or electrical change is made;
- (3) Temporary decorations customary for special holidays, such as Christmas and Independence Day, erected entirely on private property;
- (4) Real estate signs not exceeding eight square feet in residential zones and 24 square feet in commercial zones;
- (5) On-premises information signs guiding or directing traffic onto or off of a lot or within a lot, incidental signs, and internal information signs such as "vacancy," "no soliciting," not over eight square feet in area which are nonelectrical and nonilluminated, and do not exceed six feet in height. The information or copy displayed by or on any internal informational sign shall be limited to only those letters and/or symbols necessary to convey the required message in as brief a manner as reasonably possible and shall not advertise in any manner the facility occupying the premises nor goods or services available nor hours of operation;
- (6) Political signs;
- (7) One nonelectrical and nonilluminated business identification sign containing no advertising matter over four square feet in area, which is permanently affixed on a plane parallel to a wall;
- (8) One on-premises nonilluminated bulletin board not over 12 square feet in area for a charitable or religious organization;
- (9) For each street frontage of the premises, one nonilluminated temporary construction sign denoting the architect, engineer, and/or contractor when placed on work under construction, and not exceeding 32 square feet in area;
- (10) Memorial signs or tablets, names of buildings, and date of erection when cut into a masonry surface or when constructed of bronze or other noncombustible materials;
- (11) Nonelectrical identification signs which contain no more than the name and address of the dweller or tenant of a residence shall be allowed. Only one such sign not over two square feet in area shall be allowed for each street frontage of a residential dwelling within the city;

(12) Signs used exclusively for:

(a) Display of official notices used by any court, public body, or official, or for the posting of notices by any public officer in the performance of a public duty, or by any person in giving legal notice;

(b) Official directional, warning, or information signs of a public or semipublic nonprofit entity erected by or with the approval of the city; provided, however, the design of such signs shall be subject to the approval of the superintendent of public works in consultation with the community development department. All such signs shall be installed by or under the direction of the city department of public works and may be removed by the department of public works if they become damaged, unsightly, or otherwise fall into a state of disrepair. Upon such removal, replacement signs may be installed. The city manager is authorized to establish a fee schedule for labor and materials expended from public funds for installation of signs and/or posts. [Ord. 1139 § 1, 1995; Ord. 637 § 1, 1985; Ord. 584 § 3(A), 1983.]

18.42.060 Application.

Applications for sign permits shall be made to the code administrator upon building permit forms provided by the city.

(1) Applications for sign permits shall be accompanied by:

(a) Two site (plat) plans showing the location of the affected lot, building or buildings, and sign or signs, showing both existing signs and awnings and the proposed sign;

(b) Two copies of a scale drawing of the proposed sign or sign revision, including size, height, copy, structural and footing details, material specifications, methods of attachment, illumination, landscaping, front and end views of awning, sample of canvas, calculations for dead load and wind pressure, photograph of site and building marked to show where sign or awning is proposed, and any other information required to ensure compliance with appropriate laws;

(c) Written consent of the owner of the building, structure, or property where the sign is to be erected;

(d) A permit fee as set by written administrative directive.

(2) Exceptions.

(a) The code administrator may waive submission of plans and specifications when the structural aspect is of minor importance.

(b) If the sign to be installed is to replace a nonconforming sign, the permit and plan check fees may be waived at the discretion of the code administrator. [Ord. 584 § 3(B), 1983.]

18.42.070 Inspections.

(1) All signs controlled by this chapter are subject to periodic inspection by the code

administrator. The code administrator shall keep records reflecting inspection dates and results thereof.

(2) Footing inspections shall be made by the code administrator for all signs having footings.

(3) Every new sign shall bear the permit number and date of issue prominently and permanently affixed.

(4) Every temporary sign requiring a permit shall bear a legible notation of its expiration date.

(5) If the inspector is required to reinspect a new installation due to no fault of his own, a reinspection fee shall be charged in accordance with administration directive. [Ord. 584 § 3(C), 1983.]

18.42.080 Variances.

No variances are permitted from the requirement of this chapter; provided, however, that nothing prevents any interested party from appealing administrative decisions in accordance with the hearing examiner code. [Ord. 770 § 61, 1988; Ord. 584 § 3(D), 1983.]

18.42.090 Special use permits.

The community development department is authorized to grant a special use permit for the following purposes:

(1) Temporary signs, banners and/or posters not exceeding 40 square feet, strings of pennants, ribbons, flags, streamers, balloons, spinners, or other devices of a carnival nature may be permitted for temporary or special events, such as a grand opening, but such use shall not exceed 45 days within a three-month period. No more than three types of temporary signs may be displayed at any one time.

(2) Temporary signs exceeding 40 square feet but not exceeding 200 square feet may be permitted for temporary or special events, such as a grand opening, but such use shall not exceed 45 days. Only five such permits shall be issued to any business during a calendar year. The total aggregate of temporary signs shall be no more than 400 square feet.

(3) Inflatable displays exceeding 40 square feet and searchlights may be permitted for temporary or special events, such as a grand opening, but such use shall not exceed 10 days. Only three such permits shall be issued to any business during a calendar year.

(4) Off-premises signs in the Pacific Highway South business district. Such permit may be granted in consideration of the removal of off-premises signage in the downtown business district.

(5) Off-premises directional signs advertising group sales of single-family residences or condominiums; provided, the following conditions shall apply:

(a) Each sign permitted under this section may contain two sign faces, each of

which is no larger than 16 square feet, and no more than two signs per group sale shall be permitted;

(b) The maximum height of any such sign shall be eight feet from grade;

(c) The maximum duration of any such sign shall be 90 days or whenever the property advertised in the sign is sold, whichever occurs first; provided, the special permit may be renewed and reissued for additional 90-day periods if the property advertised in the sign has not been sold.

(d) An applicant who is granted a permit under this section shall relinquish the general privilege to place three off-premises directional signs per property under the provisions of DMMC 18.42.050(4) and DMMC 18.42.220 but shall be permitted to place an additional three off-premises directional signs for the entire group sale; provided, such signs comply with DMMC 18.42.050(4). [Ord. 1139 § 2, 1995: Ord. 873 § 1, 1990: Ord. 584 § 3(E), 1983.]

ARTICLE III. COMPREHENSIVE DESIGN PLAN PERMITS

18.42.100 Application – Generally.

Application may be made to the community development department for special consideration whereby deviations from the requirements and restrictions of this chapter may be permitted when an applicant is using a comprehensive design plan to integrate signs into the framework of the building or buildings, landscaping, and other design features of the property, utilizing an overall design theme. Comprehensive design may be used on an existing building where the facade is being altered, new construction or in freestanding signs. The exception in this article is based on an exceptional effort toward creating harmony between the sign, the building, and the site where it is located through use of a consistent design theme which complements and enhances the surrounding development and natural beauty of the area. [Ord. 584 § 3(F)(part), 1983.]

18.42.110 Application – Supplementary material.

Applications for comprehensive design plan permits shall be submitted to the code administrator on forms provided by the city and shall be accompanied by the following:

(1) A narrative describing the proposed plan, including, but not limited to, the following information:

(a) How the physical components of the sign structure relate to the copy area, detailing legibility and readability factors based on traffic speed, sign placement, and letter size;

(b) How the sign(s) relate to the immediate surroundings, including buildings, other signs, landscaping, and other decorative features;

(c) How the sign or signs relate to the desired land use characteristics promoted by the comprehensive plan and this chapter and the natural beauty within and surrounding the city;

(d) How the elements and design of the sign(s) promote and enhance the overall design theme of the city;

(e) Evaluation of potential adverse effects on adjacent property.

(2) A site plan and colored renderings of the sign(s) and building faces on which the signs will be mounted. Graphic submittals shall illustrate how the total sign proposal will appear from the street(s) from which the signage is intended to be seen.

(3) Regular sign permit application. [Ord. 584 § 3(F)(1), 1983.]

18.42.120 Criteria for granting.

In evaluating the proposed plan, the community development department shall employ the following criteria:

(1) Whether the proposal manifests an exceptional effort toward creating visual harmony between the sign, buildings, and other components of the subject property through the use of a consistent design theme;

(2) Whether the sign or signs promote the planned land use in the area of the subject property and enhance the aesthetics of the surrounding area;

(3) Whether the sign placement and size obstructs or interferes with any other signs or property in the area or obstructs natural or scenic views;

(4) Whether the proposed sign or signs is/are better coordinated, more harmonious with surrounding development including other signage and the architectural concepts

employed in the building's site then could be installed under existing criteria in this chapter;

(5) In the downtown Des Moines business district, whether the proposal promotes the city's contemporary northwest nautical theme through use of the following:

(a) Restrained use of nautical design features in the sign design, including but not limited to: ships, sails, fish, whales, water, international signal flags, seabirds, and seashells; or

(b) Use of piling, ropes, and other nautical elements integrated into the sign structure to provide a waterfront village appearance; or

(c) Use of wood-carved signs. The contemporary northwest nautical theme is based on Des Moines' waterfront village history and is not a nautical theme of cute artifacts. [Ord. 584 § 3(F)(2), 1983.]

ARTICLE IV. ZONES GENERALLY

18.42.130 Applicability.

The regulations in DMMC 18.42.140 through 18.42.270 shall apply in all zones and to all signs governed by this chapter, subject to the specific regulations of each zone. [Ord. 1237 § 3, 1999; Ord. 584 § 4(part), 1983.]

18.42.140 Structural requirements.

The structure and installation of all signs within the city shall be governed by the applicable provisions of Title 14 DMMC. [Ord. 977 § 1, 1992; Ord. 584 § 4(A), 1983.]

18.42.150 Prohibited signs.

The following signs are prohibited:

- (1) Signs or sign structures, which by coloring, shape, wording, or location resemble or conflict with traffic-control signs or devices;
- (2) Signs that create a safety hazard for pedestrian or vehicular traffic;
- (3) All flashing signs, except changing message centers;
- (4) Portable signs;
- (5) Signs attached to or placed on a vehicle or trailer parked on public or private property; provided, however, that this provision shall not be construed as prohibiting the identification of a firm or its products on a vehicle operating during the normal course of business. Franchised buses and taxis are exempt from this provision;
- (6) Off-premises signs, except real estate signs, political signs, public service/civic event signs, garage sale signs, and off-premises signs permitted by special use permit as provided in DMMC 18.42.090;
- (7) Any sign affixed to or painted on trees, rocks, or other natural features, or utility poles and the like including advertising signs affixed to or painted on fences;
- (8) Roof signs;
- (9) All portable readerboard signs;
- (10) Strings of pennants, banners, posters, ribbons, streamers, balloons, spinners, searchlights, or other devices of a carnival nature, except as provided in DMMC 18.42.090;
- (11) Home occupation signs. [Ord. 584 § 4(B), 1983.]

18.42.160 Maintenance.

All signs, together with all of their supports, braces, guys, and anchors, shall be maintained in good repair and in a safe, neat, clean, and attractive condition. [Ord. 584 § 4(C), 1983.]

18.42.170 Abandoned signs.

Abandoned signs shall be removed by the owner or lessee of the premises upon which the sign is located within 90 days after the business or service advertised by the sign is no longer conducted on the premises. [Ord. 584 § 4(D), 1983.]

18.42.180 Illumination.

The light directed on, or internal to, any sign shall be so shaded, shielded and/or directed so that the light intensity or brightness shall not adversely affect surrounding or facing premises or adversely affect safe vision of operators of vehicles moving on private or public roads, highways, or parking areas, or adversely affect safe vision of pedestrians on a public right-of-way. Light shall not shine upon nor reflect into residential structures.

Beacon lights or searchlights shall not be permitted for advertising purposes except within the commercial zones and in conjunction with temporary or special events not exceeding 10 days as permitted by special use permit. Luminosity shall not exceed 100 foot lamberts measured at the sign face. [Ord. 1237 §§ 3, 4, 1999; Ord. 584 § 4(E), 1983.]

18.42.190 Landscaping.

At the time of installation, all freestanding signs shall include landscaping and curbing around the base of the sign to prevent automobiles from hitting the sign structure and to improve the overall visual appearance of the structure. Landscaping shall be in proportion to the size and height of the signs, with a minimum of one-half square foot of landscaping for each square foot of sign area and shall be maintained throughout the life of the sign. No dead shrubs, broken parts, cracked, or extremely chipped material shall be allowed to remain without repair. [Ord. 584 § 4(F), 1983.]

18.42.200 Clearance and sight distance.

Marquees or projecting signs which project over areas where motor trucks may be required to pass beneath them shall maintain a minimum vertical clearance of 15 feet. No marquee or projecting sign may project closer than two feet from the curblin of the street. Signs must maintain a minimum of eight feet of vertical clearance over pedestrian ways. [Ord. 584 § 4(G), 1983.]

18.42.210 Exposed angle irons and guy wires prohibited.

No angle irons, guy wires, or braces used in conjunction with a projecting sign shall be visible, except those which are an integral part of the overall design. [Ord. 584 § 4(H), 1983.]

18.42.220 Real estate signs.

Real estate signs shall be limited to one sign per street frontage on the premises for sale, lease, or rent, and three directional signs to such property. Directional signs shall be displayed only during the time that the premises are actually open for inspection and shall not be placed so as to cause a hazard. [Ord. 584 § 4(I), 1983.]

18.42.230 Political signs.

Political signs shall be removed within 10 days after the final election involving the candidate or issue advertised by the sign. [Ord. 584 § 4(J), 1983.]

18.42.240 Temporary construction signs.

Temporary construction signs shall not exceed 32 square feet, with no more than one sign per street frontage, and shall be removed upon completion of the project, except as provided in DMMC 18.42.120. [Ord. 1139 § 3, 1995; Ord. 584 § 4(K), 1983.]

18.42.250 Bonus provisions.

In each of the zones, total sign area may be increased by 25 percent if the business uses only wall signs. Allowable sign area for freestanding signs may be increased by 25 percent if ground signs or monument signs are used instead of pole signs. [Ord. 1237 § 3, 1999; Ord. 584 § 4(L), 1983.]

18.42.260 Number and type.

No more than one freestanding or projecting sign may be permitted for each street frontage of a subject property; provided, however, that a street frontage which exceeds 300 feet and contains more than one vehicular accessway may be permitted one additional freestanding sign; provided, that the total allowable sign area is not exceeded. No freestanding sign may be permitted closer than 100 feet to another freestanding sign on the same property. [Ord. 584 § 4(M), 1983.]

18.42.270 Placement.

All signs, except real estate directional signs and off-premises signs approved under DMMC 18.42.090, must be located on the premises of the business that they advertise. Advertising signs located on premises other than the premises of the business they advertise are forbidden, notwithstanding single ownership of more than one premises, except where the premises are contiguous. For the purposes of this section "contiguous" means that such buildings are joined and/or interior access provided from one to the other. No sign may be located in a public right-of-way. [Ord. 584 § 4(N), 1983.]

ARTICLE V. REGULATIONS BY ZONE

18.42.280 Applicability.

In addition to the provisions in Article IV, the regulations in DMMC 18.42.290 through 18.42.325 will apply within the various zones. [Ord. 1237 § 3, 1999; Ord. 584 § 5(part), 1983.]

18.42.290 Residential.

The following signs are permitted in all residential zones:

- (1) One nonelectrical identification sign per street frontage not exceeding two square feet which contains no more than the name and address of the dweller or tenant of the residence;
- (2) One nonelectric identification sign per entrance to a subdivision; providing, that the sign does not exceed 24 square feet in area;
- (3) Except in the PR-R zone where a wall sign for a nonresidential use within a mixed-use development may be illuminated, one nonelectric identification sign, not exceeding 24 square feet, per street frontage for nonresidential uses allowed in the residential zones;
- (4) Community centers, schools, and churches are permitted one readerboard sign not exceeding 24 square feet, not exceeding eight feet in height;
- (5) Temporary signs not exceeding 16 square feet per street frontage for nonresidential uses in a residential zone;
- (6) In areas zoned for multiple-family residences, other than duplexes, one nonelectric identification sign not exceeding 24 square feet per street frontage and appropriate to the architectural design and landscape;
- (7) In the PR-R zone, onsite real estate signs for the individual dwellings shall be displayed together within or on a sign cabinet or display board. One display cabinet or

board shall be allowed per street frontage;

(8) No pole signs shall be permitted and monument signs may not exceed 10 feet in height except by special use permit. No off-premises signs except real estate directional signs are permitted;

(9) Internally illuminated signs shall be constructed using individual letters/characters, or sign cabinets with an opaque field or background so that only the individual letters/characters are illuminated. [Ord. 1267 § 5, 2000; Ord. 584 § 5 (A), 1983.]

18.42.300 Neighborhood commercial zone (N-C).

The following signs are permitted in the neighborhood commercial zone (N-C):

(1) One nonelectrical and nonilluminated business identification sign containing no advertising matter more than four square feet in area which is permanently affixed to a wall;

(2) Total sign area for a single business shall not exceed one square foot per lineal foot of street frontage up to a maximum of 100 square feet and freestanding signs may not exceed 40 square feet. No freestanding sign shall exceed the height of the primary use structure;

(3) Signs that rotate or have rotating or moving parts are prohibited;

(4) Temporary signs are permitted as provided in DMMC 18.42.240;

(5) Projecting signs are prohibited. [Ord. 1237 § 2, 1999; Ord. 584 § 5 (B), 1983.]

18.42.310 Pacific Highway South business districts not within the Pacific Ridge area.

The following signs are permitted in all commercial zones abutting Pacific Highway South that are not within the Pacific Ridge area:

(1) Each public commercial parking lot, as defined in this title, may have one sign per street frontage, not to exceed 24 square feet in sign area.

(2) Projecting signs may not project further than six feet from the surface of the building and freestanding signs may not exceed 25 feet in height.

(3) Total sign area for a single business property may not exceed three square feet per lineal foot of street frontage, up to a maximum of 300 square feet and freestanding signs may not exceed 100 square feet. Businesses housed in multiple-tenant buildings or within a multiple-building complex are subject to the regulations pertaining to such buildings or complexes.

(4) Total sign area for a multiple-tenant building may not exceed three square feet per lineal foot of street frontage. It shall be the responsibility of the property manager to designate sign area among the tenants. In addition there shall be one freestanding sign permitted not to exceed 120 square feet.

(5) A multiple-building complex shall be permitted one freestanding sign, not to exceed

one square foot per lineal foot of street frontage not to exceed a maximum of 200 square feet. In addition, each business within a multiple building complex shall be allowed a wall sign not to exceed one square foot per lineal foot of wall frontage; provided, however, that each business shall be permitted at least 32 square feet.

(6) Revolving and flashing signs are prohibited.

(7) Temporary signs shall be permitted as provided in DMMC 18.42.240. [Ord. 1267 § 6, 2000; Ord. 584 § 5(C), 1983.]

18.42.320 Downtown business district.

The following signs are permitted in all commercial zones within the district defined by South 216th Street on the north, South 232nd Street on the south, 10th Avenue South on the east, and Puget Sound on the west:

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

(2) Signs that rotate or have rotating or moving part(s), are prohibited.

(3) Projecting signs may not project further than six feet from the surface of the building and freestanding signs may not exceed 18 feet in height; however, under no circumstance shall a freestanding sign exceed the height of the primary use structure.

(4) 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. Businesses housed in multiple-tenant buildings or within a multiple-building complex are subject to the regulations pertaining to such buildings or complexes.

(5) Each multiple-tenant building is permitted one freestanding sign not to exceed 100 square feet in area. Total sign area for the property may not exceed two square feet per lineal foot of street frontage up to a maximum of 250 square feet.

(6) Each multiple-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 the complex shall be permitted a wall sign not to exceed one square foot per lineal foot of wall frontage; provided, however, that each business shall be permitted at least 32 square feet regardless of wall frontage.

(7) Temporary signs shall be permitted as provided in DMMC 18.42.240.

(8) All signs in this district must be approved by the community development department to ensure that the sign promotes the city's northwest nautical theme as described in DMMC 18.42.120(5). [Ord. 584 § 5(D), 1983.]

18.42.325 Business park zone.

The following types of signs are permitted within in the B-P zone:

(1) Freestanding Identification Signs. One monument sign per street frontage for each

single-tenant and multi-tenant building, two faces maximum per sign, no larger than 40 square feet of sign area per face, excluding the base, and no higher than six feet in height above grade.

(2) Exterior Directory Signs. Maximum of 60 square feet in area per directory, no higher than six feet above grade, located so as not to impede traffic flow, and at least 100 feet from any freestanding identification sign.

(3) Wall Signs.

(a) Single-Tenant Buildings. Maximum of 80 square feet per building, with letter height not to exceed 30 inches, and one building sign per building elevation per tenant. Signs shall not project more than one foot from the building facade nor beyond the top of the building parapet. Any structural supports shall be concealed from view or integrated in building design. Wall signs are encouraged to be of individual letters.

(b) Multi-Tenant Buildings. Maximum of 100 square feet per building, with letter height not to exceed 12 inches, and one sign per tenant. Signs shall not project more than one foot from the building facade nor beyond the top of the building parapet. Any structural supports shall be concealed from view or integrated in building design. Wall signs are encouraged to be of individual letters.

(4) Directional Signs. All traffic-control and directional signs shall be of a uniform design and shall not contain any business name, symbol, or advertising. Location, size, number, and material shall be as approved by the city. [Ord. 920 § 10, 1991.]

18.42.327 Pacific Ridge commercial zones.

Signs are permitted in the PR-C1 and PR-C2 zones as follows:

(1) Monument Signs. For single business properties, multiple-tenant buildings, and multiple-building complexes, freestanding signs are allowed as follows:

(a) Number of Monument Signs.

(i) For building sites with up to 300 feet of street frontage, one monument sign is allowed.

(ii) For building sites with more than 300 feet of street frontage, two monument signs are allowed.

(b) Monument Sign Size.

(i) Each monument sign allowed shall not exceed 80 square feet in area.

(ii) For properties with less than 80 feet of street frontage, sign area shall not exceed one square foot of sign area for each lineal foot of street frontage.

(c) Monument Sign Height.

(i) Monument signs shall not exceed 12 feet in height as measured from median sidewalk grade.

(ii) For properties with less than 120 feet of street frontage, sign height shall not exceed one foot of height for each 10 lineal feet of street frontage.

(d) Allowed signs, sign area, or sign height may not be transferred from one street frontage to another.

(e) Off-premises signs, including but not limited to billboards, are prohibited. The community development director may approve monument signs located on a separate parcel of property within a multiple-building complex when the following conditions exist:

(i) The multiple-building complex appears and functions as one building site; and

(ii) The monument sign appears and functions as an on-premises sign; and

(iii) The approval would not result in additional signs or sign area for the multiple-building complex than would otherwise be allowed; and

(iv) All monument and wall signs within the multiple-building complex conform to the provisions of this chapter.

(2) Wall Signs.

(a) Occupancies with up to 100 front feet are allowed two wall signs. Total sign area shall not exceed two square feet of sign area for each front foot of building occupancy.

(b) Occupancies with more than 100 front feet are allowed three wall signs. Total sign area shall not exceed two square feet of sign area for each front foot of building occupancy.

(c) Total sign area shall not exceed 160 square feet per occupancy.

(d) Except for buildings containing multiple occupancies, wall signage shall not extend horizontally a distance greater than 50 percent of the width of the building wall on which it is displayed.

(e) Each occupancy shall be allowed at least 24 square feet of sign area.

(f) Occupancies having an exterior building wall parallel to more than one street frontage shall be allowed signage based on the longer parallel wall. Allowed signage may be placed on either or both exterior walls. Signage placed on the shorter parallel exterior wall shall not exceed two square feet of sign area per front foot of the shorter parallel wall.

(g) Allowed wall signage is not transferable from one occupancy to another, and wall signs for one occupancy may not be placed on the exterior wall of another occupancy.

(h) Wall signs shall not be placed higher than 35 feet above median sidewalk grade.

(i) Projecting signs may not project further than six feet from the surface of the building.

(3) Revolving and flashing signs are prohibited.

(4) Internally illuminated signs shall be constructed using individual letters/characters, or sign cabinets with an opaque field or background so that only the individual letters/characters are illuminated.

(5) Temporary signs shall be permitted as provided in DMMC 18.42.090 and 18.42.240. [Ord. 1267 § 7, 2000.]

ARTICLE VI. ADMINISTRATION AND ENFORCEMENT

18.42.330 Authority of code administrator.

The code administrator of this chapter shall be the city manager, who is authorized and directed to enforce all the provisions of this chapter. [Ord. 584 § 6(part), 1983.]

18.42.340 Removal of unlawful signs – Notice.

The code administrator may order the removal of any sign erected, installed, or maintained in violation of this chapter. The expression "code administrator" shall include any city employee acting under the direction of the code administrator.

(1) Signage, General. Any property owner or occupant erecting or maintaining signage not in compliance with the provisions of this chapter, except portable signs which are regulated in subsection (2) of this section, shall be given written notice, by certified letter, specifying the violation and a direction to correct the violation or remove the sign within 30 days. Such notice shall be given to the holder of the sign permit or, if no permit exists, to the named owner of the land where the sign is erected. In the event the violation is not corrected within the 30-day period, the code administrator shall thereupon revoke the permit and remove, or cause the removal of the sign, and shall assess all costs and expenses incurred against the named owner of the sign and/or named owner of the land. Any sign which is a source of immediate peril to persons or property may be removed summarily and without notice. Alternatively, this subsection may be enforced pursuant to chapter 18.72 DMMC.

(2) Portable Signage. Portable signage includes any sign not permanently affixed; portable readerboard signs; streamers; pennants; banners; signs attached to or mounted on trees, fences, utility poles, or vehicles parked in proximity to a business with the purpose of attracting attention to such business; or any similar signs. Portable signs located on site must be removed upon 24-hour notice. Such notice shall be given by delivering a written notice of violation to the owner, occupant, or person ostensibly in charge or control of the real property upon which the sign is located. Such notice shall state the violation and shall require that the violation be corrected within 24 hours. In the event the violation is not corrected within 24 hours, the code administrator shall cause the sign or signs to be impounded. If the portable sign is located off site of the premises to which the sign reasonably relates, or if ownership of the sign cannot be reasonably determined, no notice of violation shall be provided and the sign shall be impounded forthwith. In the event a sign is removed, there shall be a removal fee of \$10.00 and a

storage fee of \$2.50 per day or fraction of a day. No sign shall be returned until the removal and storage fee is paid in full. The sign shall be stored for not less than 10 days, and thereafter the code administrator shall dispose of the sign in any manner. No cause of action shall be maintained against the city for damage to signs properly impounded, whether such damage occurred during the impoundment or storage. A third violation of this subsection occurring within a 12-month period shall result in a criminal prosecution and immediate impoundment of the sign without notice. This enforcement provision supersedes the processes contained in DMMC 18.72.060, and provides for immediate prosecution pursuant to DMMC 18.72.070. For such repeat offenses sign alteration or substitution shall be no defense. [Ord. 791 § 1, 1989; Ord. 584 § 6(A), 1983.]

18.42.350 Nonconforming signs.

(1) Nonconforming signs that were legally and permanently installed prior to December 19, 1983, shall be allowed to continue in use so long as they are continuously maintained, are not relocated, are not structurally altered or made more nonconforming in any way. However, no permit shall be issued for a new freestanding or wall sign as long as any nonconforming signs exist on that property.

(2) Nonconforming off-premises signs shall be abated in accordance with DMMC 18.48.090. [Ord. 1267 § 8, 2000; Ord. 584 § 6(C), 1983.]

18.42.360 City not liable.

This chapter shall not be construed to relieve from or lessen the responsibility of any person owning, building, altering, constructing, or removing any sign in the city for damages to anyone injured or damaged either in person or property by any defect or action therein, nor shall the city, or any agent thereof, be held as assuming such liability by reason of permit or inspection authorized in this chapter or a certificate of inspection issued by the city or any of its agents. [Ord. 584 § 6(D), 1983.]

18.42.370 Other enforcement.

This chapter may also be enforced pursuant to DMMC 18.72.040 through 18.72.080. [Ord. 584 § 6(B), 1983.]

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Des Moines Farmers Market

FOR AGENDA OF: April 14, 2011

DEPT. OF ORIGIN: Parks & Recreation

DATE SUBMITTED: April 4, 2011

ATTACHMENTS:

1. Draft Resolution No. 11-060
2. Draft 2011 Agreement between the City of Des Moines and Des Moines Farmers Market

CLEARANCES:

☒ Park & Recreation

☒ Marina

☒ Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

PURPOSE AND RECOMMENDATION

The purpose of this agenda item is to present and recommend a proposed Resolution and Agreement with Des Moines Farmers Market, a 501(c)(4) non-profit organization, to partner with the City of Des Moines related to the Des Moines Farmers Market. The 2011 Farmers Market would again be located at South Marina Park, open to the public on Saturdays between June 4 and October 29, 2011, and operate between the hours of 10:00 a.m. to 2:00 p.m.

FIRST MOTION: "I move to adopt Draft Resolution No. 11-060, authorizing the Des Moines Farmers Market between June 4, 2011 and October 29, 2011 at the Des Moines Marina, and to direct the City Manager to provide support services and amenities for the event as proposed in Draft Resolution No. 11-060."

2ND MOTION: "I move to enter into an Agreement between the City of Des Moines and Des Moines Farmers Market for the 2011 Des Moines Farmers Market as proposed in Draft Resolution 11-060, and to authorize the City Manager to sign the Agreement substantially in the form as attached."

BACKGROUND

The Des Moines Farmers Market, a 501(c)(4) non-profit organization, was established and formed its board of directors in 2009 to manage the Farmers Market. The Market has very successfully taken place since 2006 at South Marina Park and adjacent parking areas at Des Moines Marina with minimal City

support. The Des Moines City Council has provided its continued support to the Des Moines Farmers Market because of the following program benefits to Des Moines:

- The Market draws people to Des Moines Marina District and promotes Des Moines Waterfront as a destination;
- The Market improves Des Moines' quality of life and healthy lifestyles by providing farm-fresh produce and a community gathering place for positive citizen interaction;
- The Market site is located within walking and biking distance of a densely populated area and can be accessed by citizens using public and private transportation;
- The Market is strongly supported by Des Moines citizens and businesses.

DISCUSSION

The vision of the Des Moines Waterfront Farmers Market is to benefit the community by providing a consistent variety of produce and crafts by local farmers and vendors promoting a vibrant, educational, and inviting atmosphere. The mission is to enhance the Des Moines waterfront community by providing locally-grown and affordable produce and crafts while fostering a sense of community through education and diversity.

The Des Moines Waterfront Farmers Market is managed by its Board of Directors and on-site market manager Rikki Marohl.

The Board of Directors is made up of Des Moines citizens, business owners, and local vendors who will provide for the Market's administrative roles and responsibilities, insurance and infrastructure issues, program logistics and marketing and outreach. This Board provides leadership and the core volunteer support for the market season. Numerous market volunteers, sponsors and advertisers who include vendors, farmers, Des Moines citizens and business owners, have committed to support the 2011 market.

The City's Agreement with the Des Moines Farmers Market gives the City Manager authority to provide the following City services to the Des Moines Farmers Market at the City Manager's discretion.

- Waive Business License or other City fees for the conduct of the Des Moines Farmers Market-related events if requested by the Des Moines Farmers Market's Board of Directors and if there are no cost impacts to the city for doing so.
- Use of the City's promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 if requested by the Des Moines Farmers Market's Board of Directors, however, the associated marketing costs would be paid by Des Moines Farmers Market.
- Use of on-site power, water, and garbage utilities and services provided by City of Des Moines Police, Public Works, Parks, and Marina departments if requested by the Des Moines Farmers Market's Board of Directors, however, associated costs for these resources would be paid by Des Moines Farmers Market.
- Allows for the Agreement to automatically renew for one year terms if notice of non-renewal is not given by either the city of Des Moines or the Des Moines Farmers Market.

ALTERNATIVES

None provided.

FINACIAL IMPACTS

The Des Moines Farmers Market is funded through fundraising and market fees managed by Des Moines Farmers Market. Des Moines Farmers Market requests that the City of Des Moines allow use of the South Marina Park and adjacent parking lots on Saturdays between 8:00 a.m. and 4:00 p.m. from June 4 through October 29, 2011 in exchange for the economic benefits of having a farmers market located in Des Moines. Staff anticipates minimal City support would be required in 2011 for items such as: South Marina Park utility connections and coordination of communications as identified in the Agreement.

RECOMMENDATIONS/CONCLUSIONS

City Administration supports the continued use of the South Marina Park and adjacent parking lots for the Des Moines Farmers Market. In 2009, the Des Moines City Council agreed to transition of the management of the Des Moines Farmers Market to the new Des Moines Farmers Market 501(c)(4) non-profit organization. The Market has been run successfully under Des Moines Farmers Market management.

CITY ATTORNEY'S FIRST DRAFT 3/31/2011

DRAFT RESOLUTION NO. 11-060

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing Des Moines Farmers Market, a 501(c)(4) non-profit organization, to conduct the Des Moines Farmers Market at the Des Moines Marina and South Marina Park on Saturdays from June 4, 2011 until October 29, 2011 and listing conditions under which such permission is granted.

WHEREAS, the City Council finds that the Des Moines Farmers Market is a community event that enhances the quality of life for residents of the City of Des Moines, and

WHEREAS, Des Moines Farmers Market wishes to sponsor and conduct the Des Moines Farmers Market as a community event during spring through fall of 2011, and

WHEREAS, the City of Des Moines wishes to permit the Des Moines Farmers Market event and, at the same time, be held harmless from any liability arising from such activity; now therefore,

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

Sec. 1. Permission is granted to Des Moines Farmers Market to conduct the 2011 Des Moines Farmers Market on Saturdays between June 4, 2011 and October 29, 2011, subject to the following conditions:

(1) Des Moines Farmers Market shall defend and hold the City of Des Moines harmless from liability which may result from the conduct of the Des Moines Farmers Market.

(2) Des Moines Farmers Market will provide, at minimum, financial support for the Des Moines Farmers Market in the amount as proposed in the 2011 Farmers Market Budget and will pay for expenses such as the Market Manager, portable sanitary facilities, advertising and/or promotional banners associated with the event.

ATTACHMENT 1

(3) The prime leadership of the Des Moines Farmers Market activities shall be non-City personnel and it shall be clearly understood that assistance by City personnel is advisory to Des Moines Farmers Market.

(4) Des Moines Farmers Market shall provide general liability insurance in the minimum amount of two million dollars (\$2,000,000) aggregate to cover the event. The City of Des Moines shall be named as additional insured. Proof of such insurance must be delivered to the City thirty (30) days prior to the event.

(5) The Des Moines Farmers Market will be permitted to erect such special signage as is appropriate during the thirty (30) days prior to and during the event. All such signage shall be removed within ten (10) days after the last Saturday in October.

(6) Normal licenses and fees for conduct of a Des Moines Farmers Market event shall be waived where possible, provided the event subject to such permit or fee is fully sanctioned by the Des Moines Farmers Market and complies with all necessary requirements including health regulations related to Des Moines Farmers Market. Fees required by other governmental agencies shall be the responsibility of the Des Moines Farmers Market.

(7) An authorized official of Des Moines Farmers Market shall execute a written agreement, on behalf of Des Moines Farmers Market, acknowledging its responsibilities for the conduct of the Des Moines Farmers Market and accepting such limitations as are contained in this resolution in addition to such limitations as may be imposed by the City Council or City Manager, including, but not limited to:

(a) Des Moines Farmers Market agrees to take whatever reasonable measures are necessary to prevent damage to the Marina facility and to be responsible for any damage that may occur as a result of Des Moines Farmers Market or its vendors' actions in the conduct of the Des Moines Farmers Market; and

(b) A Des Moines Police Department command officer and/or the Fire Marshall of South King Fire & Rescue will have the authority to close the Des Moines Farmers Market down at any

Resolution No. ____
Page 3 of ____

time should it be necessary, following assessment of any security issue.

Sec. 2. The Des Moines Farmers Market will be allowed to have associated retail sales of food or merchandise.

Sec. 3. Upon execution of a written agreement incorporating all the terms and conditions of this resolution, the City Manager is authorized, at his discretion, to grant permission to the Des Moines Farmers Market to use and occupy, for the purpose of the Des Moines Farmers Market, City facilities and property at the Des Moines Marina and South Marina Park.

Sec. 4. The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the City Currents, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the Des Moines Farmers Market. The Des Moines Farmers Market understands that fees to cover City expenses may be charged for this use.

Sec. 5. Des Moines Farmers Market will be allowed to solicit booth fees, a percentage of sales and/or charge an admission fee to vendors of the Des Moines Farmers Market to recover the cost of the community event. Des Moines Farmers Market shall bear responsibility for all collection, accounting, and reporting of any funds collected. The City grants this privilege based upon the promoter's agreement that any funds collected in amounts greater than the cost of the event including but not limited to costs associated with overhead, staff, promotion, and security will be reinvested in the Des Moines Farmers Market for the benefit of Des Moines residents.

Sec. 6. The City Manager is authorized to provide City assistance to the Des Moines Farmers Market, which may include, without limitation, services by the Police, Public Works, Parks, and Marina departments for the purpose of logistics coordination, downtown and Marina area traffic control, road closures and parking lot management, boater safety, and pedestrian safety. Application Requirements and Market Day Rules for the Des Moines Farmers Market will be created and approved in writing by the City Manager and Des Moines Farmers

Resolution No. ____
Page 4 of ____

Market prior to the event. Any City operational costs incurred in the support of the Des Moines Farmers Market will be the responsibility of the Des Moines Farmers Market and must be approved by Des Moines Farmers Market Board of Directors in writing before incurred. The City Manager shall provide a report to the City Council on services provided and costs thereof at the end of the 2011 Des Moines Farmers Market season.

ADOPTED BY the City Council of the City of Des Moines, Washington this 14th day of April, 2011 and signed in authentication thereof this 14th day of April, 2011.

M A Y O R

APPROVED AS TO FORM:

Assistant City Attorney

ATTEST:

City Clerk

AGREEMENT
between
THE CITY OF DES MOINES
and
DES MOINES FARMERS MARKET
for
2011 DES MOINES FARMERS MARKET

THIS AGREEMENT is entered into by and between the CITY OF DES MOINES, WASHINGTON (hereinafter "City"), a municipal corporation of the State of Washington, and **DES MOINES FARMERS MARKET** (hereinafter "DES MOINES FARMERS MARKET"), a Washington non-profit corporation, regarding the 2011 Des Moines Farmers Market.

WHEREAS, the City Council finds that the Des Moines Farmers Market enhances the quality of life for residents of the City of Des Moines and wishes to permit it to operate at the Des Moines Marina property from spring through fall of 2011, and

WHEREAS, Des Moines Farmers Market, a 501(c)(4) non-profit organization, was created to operate the Des Moines Farmers Market, and

WHEREAS, the City Council wishes to have Des Moines Farmers Market manage the Des Moines Farmers Market pursuant to certain terms and conditions; now therefore,

IN CONSIDERATION of the mutual benefits and conditions listed below, the parties agree as follows:

(1) Des Moines Farmers Market agrees as follows:

(a) Des Moines Farmers Market shall conduct the 2011 Des Moines Farmers Market in compliance with the conditions outlined in City of Des Moines Resolution No. ____, a copy of which is attached hereto and incorporated by this reference, and will comply with all federal, state, and local statutes, ordinances, and regulations.

(b) The prime leadership of all Des Moines Farmers Market activities shall be non-City personnel and it is clearly understood that assistance by City personnel is advisory to Des Moines Farmers Market.

(c) Des Moines Farmers Market shall defend, indemnify, and hold the City of Des Moines, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or in connection with the

ATTACHMENT 2

conduct of the event or its associated activities, except for injuries and damages caused by the sole negligence or intentional conduct of the City, its officers, agents, and employees. In the event that any suit based upon such claim, injury, damage, or loss is brought against the City, Des Moines Farmers Market shall defend the same at its sole cost and expense; provided, that the City retains the right to participate in said suit if any principal of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, employees, or any of them, or jointly against the City and Des Moines Farmers Market and their respective officers, agents, and employees, or any of them, Des Moines Farmers Market shall satisfy the same.

(d) Des Moines Farmers Market will provide, at minimum, financial support for the Des Moines Farmers Market in the amount as proposed in the 2011 Des Moines Farmers Market Budget and will pay for expenses such as the Market Manager, portable sanitary facilities, advertising and/or promotional banners associated with the event. Des Moines Farmers Market shall provide adequate paid and/or volunteer staff, trained in courteous, efficient service to patrons of the Farmers Market. Des Moines Farmers Market shall ensure that persons handling and vending food and beverage products shall comply with all necessary health regulations.

(e) Des Moines Farmers Market will be allowed to have associated retail sales of food or merchandise as identified in the Des Moines Farmers Market 2011 Application Requirements. Des Moines Farmers Market shall not use the Des Moines Farmers Market premises for any purpose other than herein specifically designated without prior written consent of the City.

(f) Des Moines Farmers Market shall provide general liability insurance in the minimum amount of two million dollars (\$2,000,000) aggregate to cover the Des Moines Farmers Market. The City of Des Moines shall be named as additional insured. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII. The City shall be furnished with original certificates evidencing the insurance requirements thirty (30) days prior to the event.

(g) Des Moines Farmers Market will be permitted to erect such special signage as is appropriate and in compliance with the Des Moines Municipal Code in the thirty (30) days prior to and during the event. All such signage shall be removed within ten (10) days after October 30, 2011.

(h) Des Moines Farmers Market will be allowed to solicit booth fees, a percentage of sales and/or charge an admission fee to vendors of the Des Moines Farmers Market to recover the cost of the community event. Des Moines Farmers Market shall bear responsibility for all collection, accounting, and reporting of any funds collected. The City grants this privilege based upon the promoter's agreement that any funds collected in amounts

greater than the cost of the event, including, but not limited to costs associated with overhead, staff, promotion and security, will be reinvested, as Des Moines Farmers Market deems fit, in the Des Moines Farmers Market for the benefit of the Des Moines community. Des Moines Farmers Market shall maintain an accounting system meeting the City's approval and agrees to permit the City and its agents and representatives at reasonable intervals at any and all times during usual business hours, to inspect all books, records and accounts of the Des Moines Farmers Market showing gross sales and inventories.

(i) Des Moines Farmers Market agrees to take whatever reasonable measures are necessary to prevent damage to the Marina facility and to be responsible for any damage that may occur as a result of Des Moines Farmers Market's or its vendors' action taken in the conduct of the Des Moines Farmers Market.

(j) A Des Moines Police Department command officer and/or the Fire Marshall of South King Fire District will have the authority to close the Des Moines Farmers Market down at any time should it be necessary, following assessment of any security issue.

(2) The CITY agrees as follows:

(a) Upon execution of this Agreement, the City Manager is authorized to grant permission to Des Moines Farmers Market to use and occupy, for the purpose of the Des Moines Farmers Market in 2011, City facilities and property at the Des Moines Marina.

(b) Normal City fees assessed by the City for conduct of the Des Moines Farmers Market-related events shall be waived where possible, provided the events subject to such fees are fully sanctioned by Des Moines Farmers Market and comply with all necessary requirements including health regulations related to the Des Moines Farmers Market. Fees required by other governmental agencies shall be the responsibility of Des Moines Farmers Market or its vendors, as agreed between themselves.

(c) The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the event. Any City marketing costs will be paid to the City of Des Moines by Des Moines Farmers Market and must be approved by Des Moines Farmers Market's Board of Directors in writing before incurred.

(d) The City Manager is authorized to provide City assistance to the Des Moines Farmers Market, which may include all necessary power, water, and garbage utilities; services by the Police, Public Works, Parks, and Marina departments for the purpose of logistics coordination, Marina area traffic control, parking lot management and pedestrian safety. Any City operational costs will be paid to the City of Des Moines by Des Moines Farmers Market

and must be approved by Des Moines Farmers Market's Board of Directors in writing before incurred. The City Manager shall provide a report to the City Council on services provided and costs thereof.

(e) The City retains the right from time to time during the term hereof to change the location or use of areas designated for the Des Moines Farmers Market. If such relocations or adjustments are required, the parties shall cooperate so that such changes shall not unnecessarily interrupt the quality and quantity of services rendered by the Farmers Market.

(3) Independent Accounting. A true accounting of all receipts and disbursements shall be maintained by Des Moines Farmers Market and shall be made available for review and audit by the City at the discretion and expense of the City. Records of gross sales and receipts are to be kept for each revenue source and Des Moines Farmers Market is responsible for submittal of all taxes due in the ordinary course of operating the Des Moines Farmers Market.

(4) Duration of Agreement. The term of this Agreement shall be for one (1) year commencing on April 14, 2011. Unless written notice of non-renewal is given by either party ninety (90) days before the end of the term, this Agreement shall automatically renew for one (1) year terms until terminated as set forth below in section 5.

(5) Termination. Either party may terminate this Agreement with or without cause with ninety (90) days prior written notice.

The terminating party shall be liable for its share of financial obligations entered into on its behalf prior to termination, including but not limited to, printing costs and media buys.

(6) Discrimination Prohibited. Des Moines Farmers Market shall not discriminate against any employee, applicant, vendor, or any person seeking to participate in the Des Moines Farmers Market on the basis of race, color, religion, creed, sex, national origin, marital status, sexual orientation, or presence of any sensory, mental, or physical handicap.

(7) Assignment. This Agreement may not be assigned by Des Moines Farmers Market except with written approval of the City to another non-profit organization with similar goals and purposes. Des Moines Farmers Market will provide prior written notice to the City of any assignment of this Agreement to another non-profit organization. Upon assignment, the assignee will be bound by the terms and conditions of this Agreement as Des Moines Farmers Market was.

(8) Entire Agreement. This Agreement contains the entire agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties. Either party may request changes

in the Agreement. Proposed changes mutually agreed upon will be incorporated by written amendments to this Agreement.

(9) Governing Law. The existence, validity, construction, and enforcement of this Agreement shall be governed in all respects by the laws of the State of Washington.

(10) Mediation/Arbitration. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(11) Amendments/Authorization for Additional Services. This Agreement may be modified or amended and additional conditions may be authorized during the term of this Agreement upon the mutual written consent of the parties.

(12) Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

(13) Waiver. The waiver by either party of any breach of any term, condition, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

(14) Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(15) Time of Essence. Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

(16) Concurrent Originals. This Agreement may be signed in counterpart originals.

(17) Ratification and Confirmation. Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

CITY OF DES MOINES

**DES MOINES FARMERS
MARKET**

Anthony A. Piasecki
Its City Manager
At the direction of the Des Moines City
Council by Adoption of Resolution No. _____
It an Open Public Meeting on _____

By Wayne Corey
Its President

Date _____

Date _____

APPROVED AS TO FORM:

City Attorney

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Destination Des Moines Special Events

ATTACHMENTS:

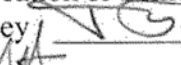
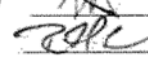
- A. Draft Resolution No. 11-061
- B. Draft Agreement Between City of Des Moines and Destination Des Moines Regarding Fireworks Over Des Moines.
- C. Schedule of Special Events

FOR AGENDA OF: April 14, 2011

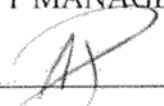
DEPT. OF ORIGIN: Parks & Recreation

DATE SUBMITTED: March 29, 2011

CLEARANCES:

- ☒ Marina 
- ☒ Parks, Recreation & Senior Services 
- ☒ City Attorney 
- ☒ PBPW 
- ☒ Police 

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

PURPOSE AND RECOMMENDATION

The purpose of this item is to seek Council approval of three Draft Resolutions authorizing "The Fireworks Over Des Moines" sponsored by Destination Des Moines Powell Homes and various and Co-Sponsors.

This event will be held at The Marina and will require the support of City public services, to be paid from outside funding sources.

PROPOSED MOTIONS:

MOTION 1.A: "To adopt Draft Resolution No. 11-061, authorizing Fireworks Over Des Moines sponsored by Destination Des Moines, on July 4, 2011 to be held at Des Moines Marina and Beach Park.

MOTION 1.B: "To approve the agreement with Destination Des Moines for providing City support services and amenities for the Fireworks Over Des Moines that includes a list of the services and amenities to be provided and the reimbursement amounts or fees that will be payable by Destination Des Moines and the co-sponsors and direct the City Manager to sign the agreement substantially in the form as attached".

BACKGROUND

In 2010 the City of Des Moines entered into an agreement with Destination Des Moines for the purpose of promoting special events. Destination Des Moines is a non-profit 501(c) 6 its mission is to promote and market the community, focusing on activities that will help to make Des Moines sustainable and livable.

Destination Des Moines plans to submit special event facility use applications to City administration requesting the use of city facilities and rights of way for other community events this summer. These events include the "Waterland Parade" and the Des Moines Pet Festival. The applications contain detailed information for each event to help identify which city services and permits may be required. Destination Des Moines and event co-sponsors will be responsible for preparing event plans, logistics, coordination, and for costs for the use of City facilities and services.

DISCUSSION

- **July 4th - Fireworks Over Des Moines**

This Annual event will be the same as the 2010 show with the exception that there will be more food vendors. The show is presented by Powell Homes and Destination Des Moines, with the support of Des Moines Legacy Foundation. The vendors open at 4pm with the fireworks starting at dusk. This is a free event.

In addition to this event, there are a number of Parks, Recreation and Senior Services, Marina and Rotary Club of Des Moines sponsored community events that will be promoted to the community by Destination Des Moines. The complete list of events to-date is contained in Attachment C

ALTERNATIVES

None provided.

FINANCIAL IMPACT

The Destination Des Moines sponsored events are recommended based on \$5,000 funds allocated to Destination Des Moines by City Council in the 2010 operating budget and \$7,500 funds allocated Destination Des Moines by City Council in the 2011 operating budget. The city has also committed to provide Marina Special Event Coordinator staff time as "in-kind" services when necessary for Destination Des Moines sponsored events. Destination Des Moines will be soliciting sponsors and many events will bring some form of revenue to help cover costs. We do not anticipate additional financial impacts to the city without reimbursement.

RECOMMENDATION/CONCURRENCE

City Department staffs recommend that City Council approve Draft Resolution No. 11- for Destination Des Moines community events.

CITY ATTORNEY'S FIRST DRAFT 3/31/2011

DRAFT RESOLUTION NO. 11-061

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing the Destination Des Moines ("Destination Des Moines") to conduct the eleventh annual "Fireworks Over Des Moines" fireworks event on July 4, 2011 at the Des Moines Marina and Fishing Pier and listing conditions under which such permission is granted.

WHEREAS, the City Council finds that "Fireworks Over Des Moines," an annual community fireworks event begun in 2001, enhances the quality of life for residents of the City of Des Moines, and

WHEREAS, Destination Des Moines wishes to sponsor and conduct "Fireworks Over Des Moines" for the July 4, 2011 event, and

WHEREAS, the City of Des Moines wishes to permit the "Fireworks Over Des Moines" event and, at the same time, be held harmless from any liability arising from such activity; now therefore,

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

Sec. 1. Permission to conduct the 2011 "Fireworks Over Des Moines" fireworks display on July 4, 2011 is granted to Destination Des Moines, subject to the following conditions:

(1) Destination Des Moines shall defend and hold the City of Des Moines harmless from liability.

(2) Destination Des Moines promoters of "Fireworks Over Des Moines" will provide financial support for a fireworks display on July 4, 2011 and will pay for event expenses such as services by the Police, Public Works, Parks, and Marina departments for the purpose of logistics coordination, downtown and Marina area traffic control, road closures and parking lot management, boater safety and pedestrian safety and for portable

Attachment A

sanitary facilities, garbage collection, paid advertising and/or promotional banners associated with the event.

(3) The prime leadership of all fireworks display activities shall be non-City personnel and it shall be clearly understood that assistance by City personnel is advisory to Destination Des Moines.

(4) Destination Des Moines promoters of "Fireworks Over Des Moines" will contract with Western Display Fireworks, Ltd. to provide the fireworks display and will assure that Western Display Fireworks Ltd's display setup meets the requirements provided by the City and shall take place no more than 48 hours before July 4, 2011, with fireworks beginning at 10:00 p.m. and site clean up to be completed within 48 hours following the event.

(5) Destination Des Moines promoters of "Fireworks Over Des Moines" will secure all permits and Destination Des Moines shall require that Western Display Fireworks, Ltd. provides liability insurance in the amount of two million dollars (\$2,000,000) to cover the discharge of fireworks. The City of Des Moines, South King Fire and Rescue, and the Des Moines Legacy Foundation shall be named as additional insureds. Proof of such insurance must be delivered to the City thirty (30) days prior to the event.

(6) Destination Des Moines promoters of "Fireworks Over Des Moines" shall provide general liability insurance in the minimum amount of two million dollars (\$2,000,000) to cover the event. The City of Des Moines, South King Fire and Rescue and the Des Moines Legacy Foundation shall be named as additional insureds. Proof of such insurance must be delivered to the City thirty (30) days prior to the event.

(7) Destination Des Moines promoters of "Fireworks Over Des Moines" will be permitted to erect such special signage as is appropriate in the thirty (30) days prior to and during the event. All such signage shall be removed within ten (10) days after July 4, 2011.

(8) Normal fees for conduct of a community event shall be waived where possible. Fees required by other governmental

agencies shall be the responsibility of Destination Des Moines promoters of "Fireworks Over Des Moines".

(9) An authorized official of Destination Des Moines shall execute a written agreement, on behalf of Destination Des Moines, acknowledging its responsibilities for the conduct of "Fireworks Over Des Moines" and accepting such limitations as are contained in this resolution in addition to such limitations as may be imposed by the City Council or City Manager, including, but not limited to:

(a) Destination Des Moines agrees to take whatever measures are necessary to prevent damage to the Marina facility and to be responsible for any damage that may occur as a result of the Fireworks Display; and

(b) A Des Moines Police Department command officer and/or the Fire Marshall of South King Fire and Rescue will have the authority to close the Fireworks Display down at any time should it be necessary, following assessment of any security issue.

Sec. 2. Destination Des Moines promoters of "Fireworks Over Des Moines" will be allowed to have associated retail sales of food or merchandise and will be exempt from the requirements of the City's Mobile and Itinerant Vendor Code, chapter 5.57 DMMC.

Sec. 3. Upon execution of a written agreement incorporating all the terms and conditions of this resolution, the City Manager is authorized, at his discretion, to grant permission to Destination Des Moines to use and occupy, for the purpose of the Fireworks Display, City facilities and property at the Des Moines Marina and Fishing Pier and Des Moines Beach Park.

Sec. 4. The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the City Currents, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the event. Destination Des Moines understands that fees to cover City expenses may be charged for this use.

Sec. 5. Destination Des Moines promoters of the event will be allowed to solicit donations and/or charge an admission fee to the fenced area of the North Lot to recover the cost of the event. Destination Des Moines promoters shall bear responsibility for all collection, accounting, and reporting of any funds collected. The City grants this privilege based upon the promoter's agreement that any funds collected in amounts greater than the cost of the event will be donated to Destination Des Moines to help pay for the following year's event.

Sec. 6. The City Manager is authorized to provide City assistance to the "Fireworks Over Des Moines" event, which may include, without limitation, services by the Police, Public Works, Parks, and Marina departments for the purpose of logistics coordination, downtown and Marina area traffic control, road closures and parking lot management, boater safety and pedestrian safety. A "Fireworks Over Des Moines" event operational plan will be created and approved in writing by the City Manager and Destination Des Moines promoters prior to the event. The estimated cost to be paid by Destination Des Moines for such City services identified in the operational plan is \$7,000.00. The City Manager shall provide a report to the City Council on services provided and costs thereof.

ADOPTED BY the City Council of the City of Des Moines, Washington this 14th day of April, 2011 and signed in authentication thereof this 14th day of April, 2011.

M A Y O R

APPROVED AS TO FORM:

Assistant City Attorney

ATTEST:

AGREEMENT
between
THE CITY OF DES MOINES
and
DESTINATION DES MOINES
for
2011 "FIREWORKS OVER DES MOINES"

THIS AGREEMENT is entered into by and between the CITY OF DES MOINES, WASHINGTON (hereinafter "City"), a municipal corporation of the State of Washington, and DESTINATION DES MOINES (hereinafter "Destination Des Moines") regarding the 2011 "Fireworks Over Des Moines" fireworks display on July 4, 2011.

WHEREAS, the City finds that the "Fireworks Over Des Moines" fireworks display enhances the quality of life for residents of the City of Des Moines, and

WHEREAS, Destination Des Moines has become the primary sponsor of "Fireworks Over Des Moines," and

WHEREAS, the City of Des Moines wishes to permit "Fireworks Over Des Moines" on July 4, 2011 and to have Destination Des Moines sponsor the fireworks display pursuant to certain terms and conditions; now therefore,

IN CONSIDERATION of the mutual benefits and conditions listed below, the parties agree as follows:

(1) Destination Des Moines agrees as follows:

Destination Des Moines shall conduct the 2011 "Fireworks Over Des Moines" fireworks display on July 4, 2011 in compliance with the conditions outlined in City of Des Moines Resolution No., a copy of which is attached hereto and incorporated by this reference, and will comply with all federal, state, and local statutes, ordinances, and regulations. Destination Des Moines further agrees as follows:

(a) The prime leadership of all fireworks display activities shall be non-City personnel and it is clearly understood that assistance by City personnel is advisory to Destination Des Moines.

(b) Destination Des Moines shall defend, indemnify and hold the City of Des Moines, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the conduct of the event or its associated activities, except for injuries and damages caused by the

sole negligence or intentional conduct of the City its officers, agents and employees. In the event that any suit based upon such claim, injury, damage, or loss is brought against the City, Destination Des Moines shall defend the same at its sole cost and expense; provided, that the City retains the right to participate in said suit if any principal of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, employees, or any of them, or jointly against the City and Destination Des Moines and their respective officers, agents, and employees, or any of them, Destination Des Moines shall satisfy the same.

(c) Destination Des Moines and/or other promoters of "Fireworks Over Des Moines" will provide financial support for a fireworks display on July 4, 2011 and will pay for event related expenses provided by the Police, Public Works, Parks, and Marina departments for the purpose of logistics coordination, downtown and Marina area traffic control, road closures and parking lot management, boater safety and pedestrian safety and for portable sanitary facilities, garbage collection, paid advertising and/or promotional banners associated with the event.

(d) Destination Des Moines and/or other promoters of "Fireworks Over Des Moines" will contract with Western Display Fireworks, Ltd. to provide the fireworks display and will assure that Western Display Fireworks Ltd's display setup meets the requirements provided by the City and shall take place no more than 48 hours before July 4, 2011, with fireworks beginning at 10:00 p.m. and site clean up to be completed within 24 hours following the event.

(e) Destination Des Moines and/or other promoters of "Fireworks Over Des Moines" will secure all permits. Destination Des Moines shall require that Western Display Fireworks, Ltd. provides liability insurance in the amount of two million dollars (\$2,000,000) to cover the discharge of fireworks, naming the City of Des Moines, South King Fire and Rescue, Destination Des Moines, and the Des Moines Legacy Foundation as additional insureds. Insurance is to be placed with insurers with a current A. M. Best rating of not less than A: VII. The City shall be furnished with original certificates evidencing the discharge of fireworks insurance requirements thirty (30) days prior to the event.

(f) Destination Des Moines and/or other promoters of "Fireworks Over Des Moines" shall provide general liability insurance in the minimum amount of two million dollars (\$2,000,000) to cover the event. The City of Des Moines, South King Fire and Rescue and the Des Moines Legacy Foundation shall be named as additional insureds. Insurance is to be placed with insurers with a current A. M. Best rating of not less than A: VII. The City shall be furnished with original certificates evidencing the event insurance requirements thirty (30) days prior to the event.

(g) Destination Des Moines and/or other promoters of "Fireworks Over Des Moines" will be permitted to erect such special signage as is appropriate in the thirty (30) days

prior to and during the event. All such signage shall be removed within ten (10) days after July 4, 2011.

(h) Destination Des Moines and/or other promoters of "Fireworks Over Des Moines" will be allowed to have associated retail sales of food or merchandise and will be exempt from the requirements of the City's Mobile and Itinerant Vendor Code, Chapter 5.57 DMMC.

(i) Destination Des Moines and/or other promoters of the event will be allowed to solicit donations and/or charge an admission fee to the fenced area of the North Lot to recover the cost of the event. Destination Des Moines and/or other promoters shall bear responsibility for all collection, accounting, and reporting of any funds collected. The City grants this privilege based upon the promoter's agreement that any funds collected in amounts greater than the cost of the event will be held in a special "Fireworks Over Des Moines" account to help pay for the following year's event.

(j) Destination Des Moines agrees to take whatever reasonable measures are necessary to prevent damage to the Marina facility and to be responsible for any damage that may occur as a result of the Fireworks Display; and

(k) A Des Moines Police Department command officer and/or the Fire Marshall of South King Fire and Rescue will have the authority to close the Fireworks Display down at any time should it be necessary, following assessment of any safety and security issue.

(2) The City agrees as follows:

(a) Upon execution of this Agreement, the City Manager is authorized to grant permission to Destination Des Moines to use and occupy, for the purpose of the "Fireworks Over Des Moines" fireworks display on July 4, 2011, City facilities and property at the Des Moines Marina and Fishing Pier and Des Moines Beach Park .

(b) Normal City fees for conduct of a community event shall be waived where possible. Fees required by other governmental agencies shall be the responsibility of Destination Des Moines.

(c) The City Manager is authorized, at his discretion, to grant permission to Destination Des Moines to utilize City promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the event. Destination Des Moines understands that fees to cover City expenses may be charged for this use.

(d) The City Manager is authorized to provide City assistance to the "Fireworks Over Des Moines" event, which may include, without limitation, services by the Police, Public Works, Parks, and Marina departments for the purpose of logistics coordination, downtown and Marina area traffic control, road closures and parking lot management, boater safety and pedestrian safety. Destination Des Moines understands that fees to cover City expenses may be charged for these services.

(3) Duration of Agreement. This Agreement will commence upon date of execution and ends upon renewal of this Contract, execution of a new Contract, City's written termination of the Contract as described in Section 4 of this Agreement, or Destination Des Moines' decision not to have the fireworks display, whichever is sooner, provided, however, all indemnification and hold harmless provisions of this Agreement shall survive the termination of this Agreement.

(4) Termination. This Agreement may be terminated by the City for good cause upon thirty (30) days' written notice to Destination Des Moines of the City's intention to terminate the same. Good cause is defined as either:

(a) Failure of Destination Des Moines to perform any requirement of this contract within ten (10) days after the City makes written demand for such performance; or

(b) Termination required for purposes of public health, safety, welfare or the public interest, as determined by a majority of the Des Moines City Council in open public meeting.

(5) Discrimination Prohibited. Destination Des Moines shall not discriminate against any employee, applicant, vendor, or any person seeking to participate in "Fireworks Over Des Moines" on the basis of race, color, religion, creed, sex, national origin, marital status, sexual orientation, or presence of any sensory, mental, or physical handicap.

(6) Entire Agreement. This Agreement contains the entire agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties. Either party may request changes in the Agreement. Proposed changes mutually agreed upon will be incorporated by written amendments to this Agreement.

(7) Governing Law. The existence, validity, construction, and enforcement of this Agreement shall be governed in all respects by the laws of the State of Washington.

(8) Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation

administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(9) Amendments/Authorization for Additional Services. This Agreement may be modified or amended and additional conditions may be authorized during the term of this Agreement upon the mutual written consent of the parties.

(10) Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

(11) Waiver. The waiver by either party of any breach of any term, condition, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

(12) Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(13) Time of Essence. Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

(14) Concurrent Originals. This Agreement may be signed in counterpart originals.

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(15) Ratification and Confirmation. Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

CITY OF DES MOINES

DESTINATION DES MOINES

Anthony A. Piasecki
Its City Manager
At the direction of the Des Moines City
Council by Adoption of Resolution No. _____
In Open Public Meeting on April 14, 2011

By _____
Its President

Date _____

Date _____

APPROVED AS TO FORM:

Assistant City Attorney

Four community events sponsored by Destination Des Moines are planned for the summer of 2011:

July 4th - Fireworks Over Des Moines

This Annual event will be the same as the 2010 show with the exception that there will be more food vendors. The show is presented by Powell Homes and Destination Des Moines, with the support of Des Moines Legacy Foundation. The vendors open at 4pm with the fireworks starting at dusk. This is a free event.

July 23rd - Waterland Parade

The Waterland parade is presented by Destination Des Moines. The parade will march through the center of the marina district from Kent Des Moines Road and Marine View Drive S. to 216th and Marine View Drive S. The parade begins at 6pm with a children's parade at 5:45pm. This is a free event to all.

August 11th - Squidman Aquathon

This is a Destination Des Moines produced event. Check in for this event is 7pm and start of event begins at 8:30am. Starting line is in the Des Moines Beach Park.

August 27th - Pet Festival

This festival is presented by Destination Des Moines and the Soggy Doggy, a local business. The festival will be at the Des Moines Field House Park from 10am-3pm. And there will be a 5k dash for owners and their pets that starts at 2pm at the Field House and ends next to the All American Sports Bar for a beer garden and celebration.

Other City wide events

June 4th - Washington Strongest Apple Competition

This event is North America Strongman sanctioned. This competition is a weight-lifting strongman/woman contest. It takes place in the Marina south lot, starting at 10am. There is no fee to watch.

July - August - Summer Concert Series

Des Moines Arts Commission is holding a series of four free concerts at the Beach Park on Wednesday evenings at 7 pm beginning July 20 through August 10. The performances are 90 minutes each as follows:

- July 20 The Red Hot Blues Sisters
- July 27 The Tallboys & opening act Ali Marcus
- August 3th Leroy Thomas and the Zydeco Road Runners
- August 10th Cherry Cherry a Tribute to Neil Diamond

July 30th - Shakespeare in the Park

Des Moines Arts Commission is hosting Seattle Shakespeare Company's performance of The Comedy of Errors. Written by William Shakespeare and directed by George Mount, it is a performance about two sets of long lost twins unknowingly cross paths, and set the stage for an evening of mistaken identity, mixed up confusion and mayhem! The event is held in the Meadow at Des Moines' Beach Park from 7pm until dusk. Admission is free.

Aug 2nd - National Night Out

This is a Des Moines Police sponsored event and is held in various neighborhoods.

September 10th- Poverty Bay Arts Festival

Poverty Bay Arts Festival is held by the Des Moines Arts Commission and sponsored by 4Culture. The event is held at various businesses throughout the Marina District who agree to host local artists and performance groups. Each business hosting an exhibit or event is identified with visual markers. The event is free and also includes a poetry slam and site specific performances.

August 19-20, Flute Fest Concerts- Beach Park Auditorium

Washington Flute Circle will hold two concerts in the Beach Park Auditorium made possible through a partnership with the Des Moines Arts Commission. The daytime activities are held at Salt Water State Park and the evening concerts will feature Rona Yellow Robe & Jeff Ball on Friday evening and Tim Blueflint & Mary Youngblood on Saturday evening.

September 10, Poverty Bay Blues & Brews

Des Moines Rotary Club invites you to attend the 2nd Annual Poverty Bay Blues and Brews Fest in the Meadow at the Beach Park. 100% of the net proceeds support the Music4Life program expanding music to youth in local schools. It is a day filled with local blues together with a variety of fine brews from local breweries. Tickets are \$20 in advance and \$25 at the gate.

September 17- Celebrate Traditions- Beach Park Auditorium Grand Opening

In conjunction with the dedication of the newly renovated Beach Park Auditorium, the Parks, Recreation and Senior Services Department will hold a community celebration. The event will be free to the public and held at the North end of the Marina including all areas of the Beach Park. Entertainment, food, activities, historical information, and more will be integrated into a new community tradition.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Setting Date for Public Hearing
for Amendments to the Pacific Ridge Zone
(Chapter 18.31 DMMC)

ATTACHMENTS:

1. Draft Resolution 11-066

FOR AGENDA OF: April 14, 2011

DEPT. OF ORIGIN: Planning, Building, &
Public Works

DATE SUBMITTED: April 5, 2011

CLEARANCES:

☒ Planning, Building & Public Works *MA*

☒ Legal *PB*

APPROVED BY CITY MANAGER FOR
SUBMITTAL: *[Signature]*

Purpose and Recommendation:

The purpose of this agenda item is to set a public hearing date to consider the amendments related to dimensional standards established for the Pacific Ridge Zone codified in Chapter 18.31 DMMC. Administration recommends the City Council approve Draft Resolution 11-066 setting a public hearing of April 28, 2011 to consider the proposed amendments to Chapter 18.31 DMMC.

MOTION:

MM OK
“I move to adopt Draft Resolution No. 11-066 setting a public hearing on April 28, 2011 to consider the proposed amendments to dimensional standards established by Chapter 18.31 DMMC.”

Background:

On July 13, 2000, the City Council adopted Ordinance No. 1267, establishing the Pacific Ridge Zone codified as Chapter 18.31 DMMC. This action was a culmination of two years of effort aimed at providing development regulations that would promote redevelopment of properties in Pacific Ridge in order to create an attractive, safe, and desirable area to work and reside. The Pacific Ridge Neighborhood was also the first neighborhood in the City of Des Moines history that was zoned to allow for mid-rise and high rise construction. However, during the establishment of the dimensional standards, the City utilized a number of standards that had been previously developed by the City to regulate low rise commercial development. As the City gains a great understanding of how these types of buildings are constructed and the unique challenges that are associated with

regulating taller buildings, refinements to the dimensional regulations are necessary to better regulate mid-rise and high rise buildings.

Under the current code, a maximum height limit has been established in the Pacific Ridge Commercial 1 Zone of 55 feet and 85 feet. Given the scale of the buildings considered for the Pacific Ridge, the resulting buildings will typically have flat roofs built to the allowable maximum building height which could result in a uniform roof line without any modulation. Therefore, one amendment that the City Council will be asked to evaluate is the creation of an allowance that would allow a portion of the building to exceed the current maximum height to encourage greater roof variation.

The other proposed amendment that the City Council would consider would address mandated 20% setback above the 3rd floor. The City has received a number of comments from builders and developers that this requirement creates inefficiencies in the design of larger buildings.

Discussion:

Amendments to Title 18 DMMC (Zoning) are considered Type VI Land Use Actions pursuant to DMMC 18.56.080(1) and as such requires a public hearing with the City Council pursuant to DMMC 18.56.200 and 18.60.040. The date of the public hearing to consider the amendments to the Pacific Ridge Zone – Chapter 18.31 DMMC is required to be set by motion of the City Council pursuant to DMMC 18.60.120(3). Approval of the resolution setting the hearing date does not obligate the City Council to approve any of the amendments that would be presented at the public hearing.

Alternatives:

The City Council may:

1. Adopt the draft resolution as written.
2. Adopt the draft resolution with amendments by the City Council establishing a different hearing date.
3. Decline to adopt the draft resolution setting the hearing date to consider amendments to the Pacific Ridge Zone.

Financial Impact:

No financial impact is foreseen by setting the public hearing.

Recommendation/Conclusion:

Administration recommends that the City Council set a hearing date.

Concurrence:

Planning, Building, and Public Works and the Legal Departments concur.

PLANNING, BUILDING, AND PUBLIC WORKS' FIRST DRAFT
04/05/2011

DRAFT RESOLUTION NO. 11-066

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a public hearing to consider Draft Ordinance No. 11-066 which amends dimensional standards established by the Pacific Ridge Zone codified as Chapter 18.31 DMMC.

WHEREAS, the City Council is considering amendments to Chapter 18.31 DMMC relating to the dimensional standards for new buildings in the Pacific Ridge Neighborhood, and

WHEREAS, a public hearing is necessary to receive public comment regarding this proposal, and

WHEREAS, a public hearing is required for adoption of an ordinance which amends a portion of the Title 18 DMMC commonly referred to as the Zoning Code; now therefore,

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

The matter of amendments to Chapter 18.31 DMMC, *Pacific Ridge Zone*, is set for a public hearing before the City Council on Thursday, April 28, 2011, at 7:30 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue South, suite B, Des Moines, Washington.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2011 and signed in authentication thereof this ____ day of _____, 2011.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Attachment #1



DATE _____

[illegible]

Fact Sheet: Marina District Zoning Changes

Planning for the Marina District is one of the top strategic objectives of the Des Moines City Council. City Council intends to improve the economic health of the Marina District and accelerate positive change by:

- Removing development obstacles;
- Providing more flexibility in the City's development regulations; and
- Identifying tools and incentives to spur economic investment.

These economic development goals seek to create a thriving business district that provides a variety of goods, services, activities and events for our community and visitors to enjoy. In order to realize these goals, the City Council is looking at changes to the D-C Downtown Commercial Zone that would:

- Establish a 20-foot setback from street corners to enhance visibility and allow for the creation of dynamic pedestrian spaces;
- Provide an opportunity to create angled parking along Marine View Drive;
- Raise the base building height along 7th Avenue S to 45 feet;
- Establish building height bonus areas and an associated public benefit system that would allow building heights of 45-, 65- and 75-feet if sufficient public benefits are included in the project; and
- Establish the use of a "floor area ratio" (i.e., the ratio of the building size to the lot size) as a more flexible standard for regulating building massing and size than the current code provides.

City Council wants to hear your thoughts and ideas! Please join in the conversation at one of the following community open houses at the **Des Moines Activity Center** located at 2045 S 216th Street:

Saturday, April 30, 2011
9 AM to Noon

Wednesday, May 4, 2011
5 PM to 8 PM

A public hearing will be held on May 12, 2011 at 7:30 PM at City Hall

Background information, Draft Ordinance No. 11-011, and an on-line comment form relating to these changes can be found on the City's website at: www.desmoineswa.gov