

ORDINANCE NO. 13,961

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by repealing Section 134-276 thereof, and enacting a new Section 134-276, and by adding and enacting new Sections 134-1235 to 134-1239 creating a new S-O Study Overlay District wherein new development or redevelopment would be restricted while an identified environmental problem is studied or remedied.

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as amended by Ordinance No. 13,888 passed November 20, 2000, be and is hereby amended by repealing Section 134-276 thereof, and enacting a new Section 134-276, and by adding and enacting new Sections 134-1235 to 134-1239 creating a new S-O Study Overlay District wherein new development or redevelopment would be restricted while an identified environmental problem is studied or remedied, as follows:

**Sec. 134-276. Classifications.**

In order to carry out the purpose and intent of this chapter, the area of the city is divided into 29 zoning district classifications as follows:

A-1	Agricultural district
R1-60	One-family low-density residential district
R1-70	One-family low-density residential district
R1-80	One-family residential district
R1-90	Large lot one-family residential district
R-2	One- and two-family residential district
R-2A	General residential district
R-3	Multiple-family residential district
R-4	Multiple-family residential district
R-5	Mobile home residential district
R-6	Planned residential development district

PUD	Planned unit development district
PBP	Planned business park district
R-HD	Residential historic district
C-0	Commercial-residential district
C-1	Neighborhood retail commercial district
C-1A	Neighborhood commercial reuse district
NPC	Neighborhood pedestrian commercial district
C-2	General retail and highway oriented commercial district
C-3	Central business district commercial district
C-3A	Central business district support commercial district
C-3R	Central business district mixed residential district
C-4	Shopping center commercial district
M-1	Light industrial district
M-2	Heavy industrial district
M-3	Limited industrial district
U-1	Floodplain district
FW	Floodway district
S-0	Study overlay district

### **Division 29. Study Overlay**

#### **Sec. 134-1235. Statement of intent.**

It is the policy and intent of the zoning ordinance to ensure orderly development with adequate utilities, drainage, transportation and other public infrastructure, and without risk to life, health

or property from fire, flood, and other special environmental concerns. From time to time there is a need to study or remedy special environmental concerns discovered in areas previously zoned for development. Special environmental concerns include flooding; deficiencies in water, sewer, drainage, transportation or other infrastructure; noise impacts from the airport and interstates; unstable soils and slopes; and other conditions which may make the area unsuitable for development. The special environmental concerns may arise from actual conditions or from potential conditions reasonably thought to exist.

The S-O study overlay district is intended and designed to balance the short term need of the public to restrict development in areas subject to an identified special environmental concern, with the need of the existing occupants and owners to have the beneficial use of their homes and businesses until long term solutions can be identified and implemented. To that end, the S-O study overlay district temporarily restricts new development which is at risk from the identified special environmental concern, while permitting the continued use, maintenance and improvement of existing homes and businesses.

Property zoned to the S-O study overlay district retains its underlying zoning classification. An ordinance zoning property to the S-O district shall lapse after a specified period of time.

**Sec. 134-1236. Application of S-O study overlay district regulations.**

A. Property may be temporarily zoned to the S-O study overlay district when a special environmental concern has been identified which uniquely impacts the property. An ordinance zoning property to the S-O study overlay district shall specifically identify the special environmental concern. An ordinance zoning property to the S-O study overlay district shall be effective for three years, unless otherwise specifically provided in the ordinance.

B. Upon final passage of an ordinance rezoning property to the S-O district, the community development department shall mail notice of such rezoning to each owner of record of the property so rezoned.

C. Property in the S-O district shall continue to be subject to all the zoning regulations applicable in the underlying zoning district, except as otherwise specifically provided in this division. Where this division identifies a more restrictive requirement than is otherwise applicable in the underlying zoning district, then the more restrictive requirement of this division shall control.

D. The city plan and zoning commission shall annually review all property zoned to the S-O study overlay district and shall file a report and recommendation with the city council on the need to continue the zoning and the appropriateness of rezoning the property or any part thereof to another zoning classification.

**Sec. 134-1237. Restrictions on new development.**

Except as allowed by section 134-1238, the following activities and uses of land and structures are prohibited in the S-O study overlay district:

- (1) The construction, placement or use of any building for human habitation not in existence on the effective date of the ordinance zoning the property to the S-O study overlay district.
- (2) Additions to existing habitable buildings which expands the habitable space located below the estimated one hundred year flood level established by the most recent studies and information available to the city.
- (3) Grading, excavating or filling, but excluding the following activities which may continue:
  - (a) Normal lawn care and gardening which is not intended to change to the grade, elevation or drainage, including the addition of compost, fertilizers and soil conditioners.
  - (b) The addition of fill to the extent necessary to prevent ponding of water adjacent to a building foundation.
  - (c) The addition of rock for the purpose of maintaining existing rock driveways and parking areas provided there is no change to the existing grade or drainage pattern.

**Sec. 134-1238. Exceptions to prohibited activities and uses.**

A. Any interested party may file an application with the community development department seeking an exception from the restrictions in section 134-1237. The application shall be made upon a form provided by the community development department. Prior to granting such an exception, the planning director shall cause notice of the exception, of the director's intent to grant the exception if no objection is timely filed, and the manner in which objections may be filed, to be mailed to the owners of all property adjoining the subject property at their address of record as shown by the records of the county assessor. The exception shall not be

granted until ten business days after the date the notice of intent to grant the exception has been mailed to the owners of the adjoining property. However, the exception can be immediately granted if an owner of each of the adjoining properties have filed a consent to the exception with the community development department.

B. Each such application shall be approved, conditionally approved or denied within fifteen business days of receipt. In granting any application, the planning director may prescribe appropriate conditions and safeguards in conformity with this division. The determination of the planning director may be appealed to the board of adjustment pursuant to section 134-63(a).

C. The planning director may approve or conditionally approve an exception pursuant to this section only if the planning director, in consultation with the city engineer, finds that the following conditions are satisfied with regard to the special environmental condition identified in the ordinance rezoning the property to the S-O district:

(1) The activity or use shall not materially increase the potential adverse impact of the special environmental condition on any other property.

(2) The activity or use shall not increase the risk of the special environmental condition to the lives and health of the occupants and users of the property.

(3) Any new structure or addition to an existing structure shall have all finished areas intended for human habitation elevated or floodproofed above the one hundred year flood elevation as determined by the most recent studies available. Any areas in a new structure below the one hundred year flood elevation which are not floodproofed shall be unfinished and used solely for low damage potential uses such as building access, parking or storage, and shall not be used for machinery

or service facilities (e.g., hot water heater, furnace, electrical service).

**Sec. 134-1239. Applicability.**

The provisions of this division shall be inapplicable to any construction or grading work where a permit for the performance of such work was issued by the community development department prior to the final passage of an ordinance rezoning the site to the S-O study overlay district.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

Preston Daniels, Mayor

Attest:

I, Donna Boetel-Baker, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 01-1936), passed by the City Council of said City at a meeting held June 18, 2001, signed by the Mayor on June 18, 2001, and published as provided by law in the Business Record on July 2, 2001. Authorized by Publication Order No.1805.

Donna Boetel-Baker, MMC, City Clerk