

October 10, 2011

Date

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 15, 2011, its members voted 11-0 in support of a motion to recommend APPROVAL to amend the Zoning Ordinance Text in Chapter 134 and the Site Plan Ordinance Text in Chapter 82 establishing a Downtown Overlay District which provides Site Plan design guidelines for an area generally bounded by Interstate 235 on the north, the Raccoon River and Des Moines River on the south, East 14<sup>th</sup> Street on the east, and M.L. King Jr. Parkway on the west; and

WHEREAS, on September 26, 2011 by Roll Call No. 11-1628, the City Council duly resolved that the public hearing on the proposed text amendments be held in Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. at which time those persons both in favor of and opposed to the amendments would be heard; and

WHEREAS, notice of the public hearing was published in the Des Moines Register on September 29, 2011 according to law; and

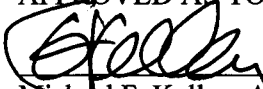
WHEREAS, in accordance with the published notice, those interested in the proposed text amendments to Chapters 82 and 134 of the Municipal Code of the City of Des Moines, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed text amendments to Chapters 82 and 134 of the Municipal Code are hereby overruled and the hearing is closed.
2. The amendments to Chapter 82 and 134 of the Municipal Code of the City of Des Moines as set forth in the attached ordinance are hereby APPROVED.

Moved by \_\_\_\_\_ to adopt and to approve the amendments to Chapters 82 and 134 of the Municipal Code of the City of Des Moines.

APPROVED AS TO FORM:

  
 Michael F. Kelley, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
 Mayor

\_\_\_\_\_  
 City Clerk

Date October 10, 2011

September 21, 2011

Agenda Item 41

Roll Call # \_\_\_\_\_

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held September 15, 2011, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 11-0 as follows:



CITY PLAN AND ZONING COMMISSION  
ARMORY BUILDING  
602 ROBERT D. RAY DRIVE  
DES MOINES, IOWA 50309-1881  
(515) 283-4182

ALL-AMERICA CITY  
1949, 1976, 1981  
2003

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley				X
Tim Fitzgerald	X			
Dann Flaherty	X			
John "Jack" Hilmes				X
Joel Huston				X
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee	X			
Mike Simonson	X			
Kent Sovern	X			
CJ Stephens	X			

**APPROVAL** of the Zoning Ordinance Text in Chapter 134 and the Site Plan Ordinance Text in Chapter 82, establishing a Downtown Overlay District which provides Site Plan design guidelines for an area generally bounded by Interstate 235 on the north, the Raccoon River and Des Moines River on the south, East 14<sup>th</sup> Street on the east, and M.L. King, Jr. Parkway on the west.  
(10-2011-5.01)

**STAFF RECOMMENDATION TO THE P&Z COMMISSION**

Staff recommends approval of the proposed amendments to the Zoning Ordinance Text in Chapter 134 and the Site Plan Ordinance Text in Chapter 82, establishing a Downtown Overlay District which provides Site Plan design guidelines for an area generally bounded by Interstate 235 on the north, the Raccoon River and Des Moines River on the south, East 14<sup>th</sup> Street on the east, and M.L. King, Jr. Parkway on the west.

## **STAFF REPORT**

### **I. GENERAL INFORMATION**

On January 24, 2011 the City Council initiated amendments to the Zoning Ordinance Text to prohibit gas stations in the "C-3" Central Business District and "C-3A" Central Business Support Commercial District and established a temporary moratorium on new gas stations in those districts until April 12, 2011.

On February 17, 2011 the Plan and Zoning Commission voted 10-1 in support of a motion to recommend approval of Zoning Text Amendments to Chapter 134-982 ("C-3A" District) and Chapter 134-1017 ("C-3" District) to prohibit gas stations and fuel retail sales businesses as permitted uses in those districts.

On March 14, 2011 the City Council held a public hearing on said amendments. During the hearing convenience store representatives stated that they were unfairly being singled-out and that numerous other uses permitted in the "C-3" and "C-3A" zoning districts were equally or more objectionable than a convenience store with fuel sales. The City Council continued the hearing to April 11, 2011 and referred the issue to the City Manager to conduct a comprehensive review and to make a recommendation regarding the appropriate uses in "C-3" and "C-3A" districts. The hearing was subsequently continued until July 11, 2011.

After a comprehensive review of the "What's Next Downtown" plan, Staff recommended to the City Council on July 11, 2011 that convenience stores and other auto-dominant uses should be allowed in the downtown. However, the location of auto-dominant uses and design of all uses within the downtown should be regulated based upon the vision of the "What's Next Downtown Plan" that was adopted by the City Council on March 10, 2008. The City Council approved an extension of the moratorium until October 11, 2011 to accommodate code drafting, public information meetings, public hearing by P&Z, and public hearing and at least first reading by the City Council on a proposed Downtown Overlay District.

A public meeting for property owners within the proposed Downtown Overlay District was held on August 30, 2011.

On September 26, 2011 it is anticipated that the City Council will schedule a new public hearing for October 10, 2011 regarding on the proposed code amendments.

### **II. ADDITIONAL APPLICABLE INFORMATION**

In summary, the proposed amendments to Chapter 134 of the City Code create a Downtown Overlay District as follows:

- The purpose of the Downtown Overlay District is:
  - to ensure that new uses and development within the district are compatible with the vision and principles of the "What's Next Downtown Plan"

- to provide minimum urban development design guidelines for the entire downtown
- to provide administrative design guidelines and review for projects not subject to P & Z site plan review
- to provide additional design guidelines for projects already subject to P & Z site plan review
- The Downtown Overlay District would be bounded by SE 14<sup>th</sup> Street on the east; the Des Moines and Raccoon Rivers on the south, MLK, Jr. Parkway on the west; and I-235 on the north.
- The Downtown Overlay District would prohibit the following uses:
  - Lumberyards and building material sales yards
  - Manufacturing, packaging or storage of dairy products
  - Off-premise advertising signs – except as allowed in the Entertainment Sign Overlay District (i.e. Court Avenue area).
  - Trailer, boat, and farm implement establishments for display, hire, rental and sales
  - Drive-in theaters
  - Monument sales yards
  - Motels, motor hotels and tourist courts
  - Auction businesses
  - Sign painting shops
  - Mobile home parks
  - Adult entertainment businesses
  - Salvage/junk yards
  - Contractor's equipment storage yards
- The design guidelines will supersede bulk regulations of the underlying district except within DR-HD and R-1 Districts.
- New construction and remodeling within the Downtown Overlay District shall be subject to the Downtown Overlay District design guidelines in the site plan regulations of Chapter 82, Article 5.

The proposed amendments to Chapter 82, Article 5 will establish design guidelines as follows:

- Projects should offer “place specific” architecture and design solutions that are consistent with the vision of the “What’s Next Downtown Plan” (i.e. corporate prototype architecture may not be acceptable).
- Low impact development techniques should be utilized and demonstrated.
- The minimum height for all uses should be lesser of 36 feet or 3 stories.
- All buildings with river frontage should orient towards the river and have building entrances that are oriented to the river and primary street(s).
- All buildings without river frontage should have entrances oriented toward primary street(s).
- All buildings should have frontage on principal street(s) of not less than 70% of the lot.
- For commercial and mixed-use buildings – at least 70% of the building frontage should be within 1 foot of property line.
- At least one building entrance for residential uses should directly access the street when residential is located above street-level retail or commercial uses.
- For residential buildings – a maximum setback of 15 feet from the public right-of-way is permitted unless superseded by bulk regulations of the underlying zoning district (i.e. “R-HD” Residential Historic District, “R1, Low Density Residential District, etc).
- Access doors for loading and unloading should not be located facing a public street without proper screening.
- Development on a site larger than two acres should rezone to the PUD, Planned Unit Development District.
- Parking ramps should include ground floor retail or commercial uses or be designed for future conversion of the ground floor to retail or commercial use or have significant architecture detail.
- Storage of all materials and equipment should be in a completely enclosed building.
- Refuse and garbage containers should be enclosed on all four sides with durable materials that are compatible with the principal structure and have steel gates.
- The number of existing curb cuts should be consolidated and new curb cuts should be minimized per review of the City Traffic Engineer.

- The site shall provide landscaping in accordance with the “C-3” landscape standards.
- Connectivity between adjacent properties should be provided / demonstrated for both vehicular and pedestrian circulation.
- Soft green spaces for pedestrians should be provided on-site.
- Outdoor spaces for pedestrians should be provided on-site.
- Connections to adjoining bike paths and on street bike facilities and bike racks should be provided on site within close proximity to the building entrances.
- Auto-dominant uses (convenience stores with fuel sales, fast-food restaurants with drive-through lanes, drive-through bank facilities, etc.) should be located in a mixed use commercial center with unified commercial design.
- Drive-through facilities, fuel canopies, vehicular access and parking should not front or have vehicular access oriented toward a pedestrian corridor or gateway corridor.
- Convenience stores should have no more than 6 pumps (allow no more than 12 vehicles to be fueled at one time).
- The guidelines will apply to the entire site for new construction and when the cumulative expansion of an existing building exceeds 50% of the gross floor area that existed on the date the overlay district is applied.
- The guidelines will only apply to the new portion of the building when the cumulative expansion of an existing building is less than 50% of gross floor area that existed on the date the overlay district is applied.
- In the absence of any required review by P & Z the community development director shall determine the applicability of design guidelines.
- Any appeal of a determination will be to P & Z and Council if necessary.

The ordinance text implementing the above provisions will be forwarded to the Commission prior to the public hearing.

## **SUMMARY OF DISCUSSION**

Mike Ludwig presented the staff report and recommendation.

Mike Simonson asked what type of notification went out to all of the property owners informing them of the proposed amendments.

Mike Ludwig stated that a post card was mailed out to all property owners within the boundary. Staff received numerous calls and offered two presentations on August 30, 2011 at 5:00 p.m. and 6:30 p.m. About 25 people attended.

Tim Fitzgerald asked about mobile vending units and how will they fit in this overlay.

Mike Ludwig stated that mobile vending units are not specifically addressed by these guidelines. It is entirely addressed by the mobile vendor ordinance.

Will Page commented on the proposed amendments to Chapter 82, Article 5 where it states that the “projects should offer “place specific” architecture and design solutions that are consistent with the vision of the “What’s Next Downtown Plan” (i.e. corporate prototype architecture may not be acceptable).” He is glad to see that it is the first bullet point in the list.

### **CHAIRPERSON OPENED THE PUBLIC HEARING**

*There was no one to speak in favor of the applicant’s request*

*The following spoke in opposition of the applicant’s request*

Mike O’Malley Lillis, O’Malley Law Firm 317 6<sup>th</sup> Avenue, Ste. 300 representing Aluminum Distributor, Inc. which is a corporation that operates a wholesale distributorship of home improvement products at 706 E. 2<sup>nd</sup>. The overlay would prevent Aluminum Distributor from expanding their building or using their property in the manner of which they are accustomed to. They suggest if the Commission approves this amendment that the wording includes retail, which would not include Aluminum Distributor because they are a wholesale business. They are also concerned about the building frontage having to be within 1-foot of the property line

Greg Jones asked how far east the overlay district extends.

Mike O’Malley stated that the plan goes East 14<sup>th</sup> Street and the Aluminum Distributor would like their property excluded from the overlay plan.

Dann Flaherty asked if the Aluminum Distributor is talking about expanding more than 50% of its current floor space.

Mike O’Malley stated that they could, they have enough room to do that.

Dann Flaherty stated when they talk about the problems that they are running into, would that be more than 50% expansion.

Mike O’Malley stated that they have enough room in the back that they could expand the building 50% if they wanted. However, that option is being taken away from them.

Dann Flaherty stated that if they are not expanding over 50% of their space they do not fall under the guidelines.

Mike O’Malley stated that he guess that takes the option away. He more concern about them being included and having to comply.

Mike Ludwig stated that the Aluminum Distributor’s property is currently zoned “DR” District and at the time the property was rezoned, it was classified as a warehouse use and in the “DR” District warehouse is still a permitted use. None of the proposed changes in

the overlay district prohibits warehouses. There were specific exemptions that were written into the zoning ordinance of the "DR" District to address those existing warehouses. They were allowed to continue to operate.

The permitted use list includes "warehouses and warehousing which are conforming uses on December 31, 2003 and replacement thereof provides the construction of the replacement commence within six months and diligently pursued to completion." The guidelines about building placement and setback currently exist on the property. The "DR" District has the same design guidelines as what is proposed in the overlay district.

Mike Simonson asked staff to explain the process for obtaining relief.

Mike Ludwig stated that the "DR" District, which they are in, requires Plan and Zoning Commission review. The Plan and Zoning Commission would determine if the proposed plan complies with the design guidelines. It just requires a Site Plan. It would only have to go to Council if the applicant disagreed with the Commission's decision.

Mike O'Malley stated that yards and building material sales yards that could be interpreted to be warehouses in his opinion and definitely conflicts. He suggests that the guidelines include other than wholesale or warehouse uses.

Will Page stated that the use of the word yard precludes his problem, because yard is raw land.

Mike Ludwig stated that the "DR" District allows warehouse use specifically. There is nothing in the proposed overlay district that prohibits warehouse uses.

Rich Eychaner 300 Walnut stated he has two properties that appear to be problematic. One is a 39 foot wide property on Grand Avenue which means if he redevelops the property he would have to build a 3-story building on a 39 foot wide site. He does not think that is logical. Also part owner of 322 SW 3<sup>rd</sup> Street immediately south of the Science Center and according to the proposed overlay district it would have all kinds of issues. This is an enormous complex proposal which is affecting thousands of property owners who are not aware of what is being considered. He suggest that they do a lot more public education and research and talking to property owners.

#### *Rebuttal*

Mike Ludwig stated that a notice went out to all property owners downtown. The notice did refer to a downtown overlay district that would have design guidelines. The people who attended expressed limited concern about what was proposed. They are guidelines you don't have to go to the Zoning Board of Adjustment to get a variance. It is up to the Community Development Director if it is an administrative review or the Planning Commission if it complies with the guidelines or not. The staff or administrative reviews are appealable to the Commission, Council if the applicant disagrees with the Director's interpretation. The City Council directed staff to prepare an ordinance that was comprehensive and that is why that is in front of the Commission this evening.

#### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

CJ Stephens stated that she wanted to make sure that these were only guidelines.



Dann Flaherty stated that he was on the designing of the 2020 Character Plan. A lot of time and effort was put in it but there was something missing. There were no design guidelines and no plan for the inner part of the City at all. What Council and staff are trying to do is at least put some guidelines in place so people will understand where we are going. This may not be what everyone is looking for but when the 2020 Character Plan was designed it was not what everyone was looking for. As the City is starting to be developed, there needs to be some direction.

CJ Stephens commented that she attended three sessions of first visits for people who were thinking of opening a business in the City of Des Moines, like the Council asked the Commission to do. She does think that the system needs a little work. She believes in the guidelines as long as they are flexible and people know where we are trying to go.

Mike Simonson stated that he thinks the word guideline is going to be the defining term. There could be some wonderful buildings built and wonder spaces created that do not meet these requirements.

Dann Flaherty stated that it gives the Commission an opportunity to look at it too.

**COMMISSION ACTION:**

CJ Stephens moved staff recommendation to approve the proposed amendments to the Zoning Ordinance Text in Chapter 134 and the Site Plan Ordinance Text in Chapter 82, establishing a Downtown Overlay District which provides Site Plan design guidelines for an area generally bounded by Interstate 235 on the north, the Raccoon River and Des Moines River on the south, East 14<sup>th</sup> Street on the east, and M.L. King, Jr. Parkway on the west.

Motion passed 11-0

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

MGL:clw

cc: File

### DIVISION 33. DOWNTOWN OVERLAY DISTRICT

#### Sec. 134-1265. Statement of intent.

The Downtown Overlay District is hereby established to ensure that new uses and development within the district are compatible with the vision for the downtown area regarding the location and design of uses set forth in the "What's Next Downtown Plan", adopted by the City Council on March 10, 2008 by R.C. No. 08-432. The downtown overlay district is intended to provide minimum urban development guidelines for the entire downtown.

(C00, § 134-1265; O.15,---)

#### Sec. 134-1266. Boundary.

The downtown overlay district is bounded by East 14<sup>th</sup> Street on the east; the Des Moines and Raccoon Rivers on the south, Martin Luther King, Jr. Parkway on the west; and I-235 on the north.

(C00, § 134-1266; O.15,---)

#### Sec. 134-1267. Prohibited uses.

Property in the Downtown Overlay District shall continue to be subject to all the zoning regulations applicable in the underlying zoning districts, except as otherwise specifically provided in this division. The following uses are prohibited in the downtown overlay district, as well as those uses prohibited in the applicable underlying zoning districts.

- (1) Lumberyards and building material sales yards.
- (2) Manufacturing, packaging and storage of dairy products.
- (3) Off-premise advertising signs, except as allowed in the ESO entertainment sign overlay district and the PSO pedestrian sign overlay district.
- (4) Trailer, boat, and farm implement establishments for display, hire, rental and sales.
- (5) Drive in theaters.
- (6) Monument sales yards.
- (7) Motels, motor hotels, tourist courts, and other transient housing whereby access to any individual guest room is gained directly from an exterior parking lot.

- (8) Auction businesses.
- (9) Sign painting shops.
- (10) Mobile home parks.
- (11) Adult entertainment businesses.
- (12) Salvage yards.
- (13) Contractor storage yards.

(C00, § 134-1267; O.15,---)

**Sec. 134-1268. Bulk regulations.**

- (a) Development in the downtown overlay district shall be subject to the design guidelines in section 82-214.9 which, in the event of a conflict, shall supersede the regulations of the underlying zoning district, except for residential development in R-HD and R1-60 zoning districts.
- (b) C-3 landscaping standards shall be applicable to all sites within the downtown overlay district, except for residential development in R-HD and R1-60 zoning districts.
- (c) In the absence of other specific bulk regulations, new construction and remodeling within the downtown overlay district shall be subject to the downtown overlay design guidelines in the site plan regulations at section 82-214.9.

(C00, § 134-1268; O.15,---)

**Secs. 134-1269–134-1275. Reserved**

CHAPTER 82  
PLANNING  
ARTICLE V. SITE PLAN REVIEW

**Sec. 82-214.9. Design guidelines within the downtown overlay district.**

- (a) *Intent.* The design guidelines within the downtown overlay district are intended to support, enhance and protect pedestrian corridors as designated and approved by city council resolution on file in the office of the city clerk in accordance with the "What's Next Downtown Plan," adopted by the city council by R.C. 08-432 on March 10, 2008.
- (b) *Scope.* In acting upon any site plan application for development of property located within the downtown overlay

district, the community development director (or plan and zoning commission if applicable) shall apply the regulations in section 82-213 of this article and the design guidelines in this section except as to those site plan applications for development of property located in the R1-60 and R-HD zoning districts within the downtown overlay district. The decision to approve, approve subject to conditions or disapprove a proposed site plan shall be based upon the conformance of the site plan with such design regulations and the following guidelines. These guidelines shall be applied to the entire site when a new building is constructed or when an existing building is cumulatively expanded by more than 50% of its gross floor area as of the time it became part of the downtown overlay district. If a building is cumulatively expanded by less than 50% of its gross floor area as of the time it became part of the downtown overlay district, then these guidelines shall apply only to the expansion of the building.

- (c) *Guidelines.* Subject to the exceptions stated in subsection (b), above, any site plan application which includes improvements to property in the downtown overlay district shall conform to the design regulations in section 82-213 and the following additional guidelines:
- (1) Projects should demonstrate understanding of the micro and macro context for the project by offering place specific solutions for materiality, massing, uses, fabric and climate that are consistent with the vision of the "What's Next Downtown Plan". In most cases, corporate prototype architecture may not be an acceptable design.
  - (2) Low Impact development techniques should be utilized which implement site water quality control solutions, using materials which are locally available and creating projects which minimize energy consumption.
  - (3) Connectivity between adjacent properties should be provided or demonstrated for both pedestrian and vehicular circulation.
  - (4) The incorporation of 'soft (green) spaces' on site is encouraged.
  - (5) Where feasible, projects shall provide outdoor spaces for people gathering.
  - (6) If feasible, connections to adjoining bike paths or on-street bike facilities and on-site bike racks

- should be provided in close proximity to building entrances.
- (7) Building heights. Minimum height for all uses should be the lesser of 36 feet or three stories.
  - (8) Bulk standards, building setbacks, orientation, frontage and residential access:
    - a. All buildings with river frontage should orient towards the river and have building entrances that are oriented to the river and primary street(s).
    - b. All buildings without river frontage should have entrances oriented toward primary street(s).
    - c. All buildings should have frontage on principal street(s) of not less than 70 percent of the lot.
    - d. For commercial and mixed-use buildings, at least 70 percent of the building frontage should be within one foot of the property line.
    - e. At least one building entrance for residential uses should directly access the street when a residential use is located above street-level retail or commercial uses.
    - f. For residential buildings, a maximum setback of 15 feet from the public right-of-way is permitted unless superseded by bulk regulations of the underlying zoning district (i.e. R-HD Residential Historic District, R1-60 Low Density Residential District, etc.).
  - (9) Storage of all materials and equipment should take place within completely enclosed buildings.
  - (10) All refuse collection containers and dumpsters should be enclosed on all sides by the use of a permanent wall of wood, brick or masonry and steel gates which are compatible in design with the principal structure.
  - (11) All open areas not used for off-street loading or parking should be landscaped in accordance with the Des Moines Landscape Standards for C-3 districts.
  - (12) Access doors for any warehouse use and any loading docks should not front on any public street.
  - (13) Gas stations/convenience stores shall be limited to no more than six pumps and allow no more than 12 vehicles to be fueled at one time.
  - (14) Gas station / convenience stores and canopies, drive-thru facilities for restaurants, banks, parking garages and other auto-dominant uses should not front or have vehicular access on or to a pedestrian corridor as designated in the downtown pedestrian

corridor map on file in the office of the city clerk as approved by city council resolution.

- (15) Existing curb cuts should be consolidated to the minimum number necessary and be located as directed by the city traffic engineer and community development director.
- (16) Parcels proposed for development that are greater than two acres should be rezoned to a planned unit development (PUD) zoning classification.
- (17) Auto-dominant uses as described in subsection (c)14, above should be located in a mixed use commercial center and with buildings possessing a unified commercial design.
- (18) Parking ramps should either include ground floor retail or commercial space, be designed for conversion to retail or commercial space, or have significant architectural detail.

(C00, § 82-214.9; 0.15,---)