



Roll Call Number

Agenda Item Number

36

Date February 23, 2015

An Ordinance entitled, "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 amending Sections 134-708 and 134-741(15), relating to clarifying remedial measures in response to failure to submit a PUD or PBP Development Plan or to commence construction in accordance with a time schedule set forth in a PUD or PBP Development Plan",

which was considered and voted upon for the first time under Roll Call No. 15- 0135 of January 26, 2015, and considered and voted upon for the second time under Roll Call No. 15- 0222 of February 9, 2015, again presented.

Moved by _____ that this ordinance do now pass.

ORDINANCE NO. _____

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				

MOTION CARRIED APPROVED

Mayor


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.

City Clerk

36

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: February 9, 2015
	Agenda Item No. 35 Roll Call No. 15-0222 Communication No. 15-065 Submitted by: Phillip Delafield, Community Development Director

AGENDA HEADING:

Second consideration on proposed amendments to the zoning ordinance regarding remedial measures relating to Planned Unit Development (PUD) and Planned Business Park (PBP) development plans.

SYNOPSIS:

On January 26, 2015, the City Council held a public hearing and approved first reading of amendments to the zoning ordinance regarding remedial measures relating to PUD and PBP development plans. Council also directed staff to prepare a policy for review of existing PUD and PBP's for consideration at the February 9th Council meeting. The proposed policy and process is outlined in the Additional Information section of this communication. Staff recommends approval of proposed amendments to the zoning ordinance and policy for review of existing PUD and PBP districts.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

The amendments to the PUD and PBP regulations, are proposed so that City Code matches the City's historical and current practices for administration of the zoning code. Staff believes changing mandatory words "shall" to permissive words "may" are minor in nature. The proposed text still preserves the City's right and discretion to void a PUD or PBP in the future if necessary.

Policy for Review of PUD and PBP Districts:

Staff proposes the following policy for review of existing PUD and PBP districts:

- The first regular City Council meeting in April of each calendar year, Staff will present a written status update on any PUD's or PBP's that have not submitted a Final Development Plan within 2 years of the PUD Concept Plan being approved; that have not submitted a Final Development Plan within three (3) years of the PBP Concept Plan being approved; or that have failed to commence construction in accordance with the time schedule specified on the Final Development Plan. City Council will determine if they want a Council Workshop presentation on any of the PUD's or PBP's under reconsideration.
- The second regular City Council meeting in April of each calendar year or thereafter, a Council member may make a motion for consideration and approval by the full City Council to refer a

PUD or PBP district to the Plan and Zoning (P&Z) Commission for hearing on remedial measures in accordance with Section 134-708 or Section 134-741.

- The Community Development Director will identify a proposed schedule for the public hearing by the P&Z Commission based upon current and known future staff workload.
- Pursuant to code Sections 134-708 (PUD's) or 134-741 (PBP's), notice to developer of the P&Z Commission hearing shall be delivered by certified mail.
- Pursuant to Sections 134-708 (PUD's) or 134-741[15] (PBP's), the P&Z Commission shall consider all circumstances relevant to the developer's failure and may vote to recommend to the City Council that appropriate remedial measures be initiated, which measures may include (i) the initiation of rezoning of the subject property to the zoning classification immediately prior to the rezoning of the subject property to a PUD or PBP classification, and/or (ii) referral of the matter to the legal department for institution of enforcement proceedings in the courts pursuant to Sections 134-31 and 135-32 of the zoning code.
- Pursuant to Sections 134-708 (PUD's) or 134-741[15] (PBP's) upon receipt of the recommendations of the P&Z Commission, the City Council may act to initiate remedial measures in conformity to the P&Z Commission's recommendations or to initiate such other remedial measures as the City Council determines to be reasonably necessary under the circumstances.

Planned Unit Development District Code History

The PUD regulations were first adopted by Ordinance 10,726 on November 4, 1985. The original code required the developer to submit a development plan within one (1) year from the date a concept plan was approved. The original ordinance included the mandatory "shall" language for review of PUD's that did not have a final development plan submitted or for failure to complete work with the schedule on the approved development plan. Ordinance 12,067 was approved on November 22, 1993 and amended the code to require the developer to submit a final development plan within two (2) years from the date the conceptual plan was approved.

Since 1985, the City has approved 112 PUD zoning districts within the City. Preliminary research indicates that there are approximately 10 approved PUD Concept Districts for which no Final Development Plan was submitted within two (2) years after the PUD Conceptual Plan was approved. All remaining PUD's are either completed entirely pursuant to approved plans or have a Final Development Plan approved and constructed for at least one phase.

In the 30 years that PUD regulations have existed, staff is unaware of any PUD district that was voided by the City for a failure to submit a development plan within two years after the date the Concept Plan was approved or a failure to commence construction within the timeline of listed on a final development plan.

Planned Business Park District Code History

The PBP regulations were first adopted by Ordinance 11,325 on June 5, 1989. The original code required the developer to submit a development plan within three (3) years from the date a concept plan was approved. The original ordinance included the mandatory “shall” language for review of PBP’s that did not have a final development plan submitted or for failure to complete work with the schedule on the approved development plan.

Since 1989, the City has approved five (5) PBP zoning districts within the City. Preliminary research indicates that there is one (1) PBP district for which no concept plan or final development plan exists (located generally between Old Army Post Road, New Army Post Road, SW 42nd Street and SW 48th Street adjacent to the Des Moines International Airport runway). All remaining PBP’s are either completed entirely pursuant to approved plans or have a Final Development Plan approved and constructed for at least one (1) phase.

In the 26 years that PBP regulations have existed, staff is unaware of any PBP Conceptual Plan that was voided by the City for a failure to submit a development plan within three (3) years or failure to commence construction within the timeline of listed on a final development plan.

PUD and PBP District Administrative Practice

PUD’s and PBP’s have historically been held to a higher “quality” standard than by-right development in other zoning districts. As such, PUD’s and PBP’s have regularly been encouraged by the Community Development Department, Plan and Zoning Commission and City Council as a preferred method of development. The primary benefit of PUD’s and PBP’s is that specific uses, specific layouts and specific design/architecture are ultimately approved by the City Council for a particular development after public hearings by the Plan and Zoning Commission and City Council. By comparison, many other zoning districts allow a range of uses with minimal design/architecture review to occur after administrative review by staff without public notice or hearing, and there are no time limits for which any development must commence.

PUD’s and PBP’s require a developer to incur significant upfront planning, architecture and engineering design costs prior to having “zoning approval”. Once a PUD or PBP is approved, any significant change to use, layout or architecture is also subject to public hearings by the P&Z and City Council and additional planning, architecture and engineering costs. Therefore, based on the time, process, costs and scrutiny that PUD’s and PBP’s are ultimately subjected to, current and past City staff have been hesitant automatically refer inactive projects to the P&Z and Council for review. Staff believes that it could ultimately reduce a future developer’s willingness to submit a project under the PUD or PBP standards.

Staff has ultimately deferred to the belief that any PUD or PBP plan that was ultimately approved by a City Council, was a quality development proposal and should remain valid until amended by the City Council. The City has utilized existing, but yet to be constructed PUD and PBP district plans to negotiate equal or better development plans on numerous occasions when revisions are proposed.

All existing PUD and PBP zoning districts are reflected on the City’s zoning map. Copies of all PUD/PBP Concept Plans and Development Plans are kept on file in the Community Development Department and are available during normal work hours to the public.

Potentially Non-Compliant PUD and PBP Districts as of February 9, 2015:

Attached to the roll call is a map showing the locations of all approved PUD and PBP Districts in the City of Des Moines. Those districts which have no development plan approved or that have not commenced construction on any phase per the approved development plan are highlighted on the map in orange and are listed below:

- *Northridge Mall PUD (1987)* – E. 14th Street/I-80, regional mall use
- *Pearl Lake PUD (2001)* – 3009 E. Payton Avenue, mixed density residential uses
- *Copper Crossing PUD (2004)* – 5450 NE 23rd Avenue, mixed density residential uses, amendment to approved plan currently being processed
- *Harvest Hills PUD (2006)* – 3930 SE 72nd Avenue, mixed density residential and commercial uses
- *Southern Ridge PUD (2006)* – 300 County Line Road, mixed density residential and commercial uses
- *Silver Leaf PUD (2007)* – 5100 NE 38th Avenue, mixed density residential uses
- *Beaverdale Hy-Vee (2007)* – 4442 Douglas Avenue, grocery store / commercial use
- *Vision Fuels PUD (2007)* – Agrimergent Technology Park, ethanol plant use
- *Brook Run North PUD (2008)* – 5100 NE 38th Avenue, mixed density residential uses
- *Kum & Go #120 PUD – (2012)* – 6304 SW 9th, gas station / convenience store use
- *PBP zoning* – Airport property generally between Old Army Post Road, New Army Post Road, SW 42nd Street, and SW 48th Street.

PREVIOUS COUNCIL ACTION(S):

Date: January 26, 2015

Roll Call Number: 15-0134

Action: Public hearing on proposed amendments to the Zoning Ordinance regarding remedial measures relating to PUD and PBP development plans (continued from January 12, 2015). (Council Communication No. 15-039) Moved by Hensley to adopt and approve the proposed amendments to Section 134-708 and Section 134-741(15) of the Zoning Ordinance of the Des Moines Municipal Code, subject to final passage of the enacting ordinance. The City Manager will provide a policy for review of existing PUD and PBP's for consideration at the February 9th Council Meeting. Motion Carried 7-0. (A) First consideration of ordinance above. Moved by Hensley that this ordinance be considered and given first vote for passage. Motion Carried 7-0.

Date: January 12, 2015

Roll Call Number: 15-0068

Action: Public hearing on proposed amendments to the zoning ordinance regarding remedial measures relating to PUD and PBP development plans. Moved by Hensley to continue the hearing to January 26, 2015 at 5:00 PM and request that the City Manager and City Attorney provide information regarding prior PUD and PBP plan approvals that could need to be reviewed by the Plan and Zoning Commission and City Council based upon existing code and reasoning for proposed changes. Motion Carried 7-0.

Date: December 22, 2014

Roll Call Number: 14-1933

Action: Set date of hearing on proposed amendments to the zoning ordinance regarding remedial measures relating to PUD and PBP development plans, (1-12-15). Moved by Hensley to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Board: Plan and Zoning Commission

Date: December 4, 2014

Resolution Number: 10-2014-5.05

Action: The Commission voted 11-0 in support of a motion to recommend APPROVAL of proposed amendments to Section 134-708 and Section 134-741(15) of the Zoning Ordinance of the Des Moines Municipal Code to clarify remedial measures in response to failure to submit a PUD or PBP Development Plan or to commence construction in accordance with a time schedule set forth in a PUD or PBP Development Plan, as proposed by City staff.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Receive annual status report on inactive PUD and PBP districts at the April 6, 2015 City Council meeting.

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the first floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.

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ORDINANCE NO. _____

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 amending Sections 134-708 and 134-741(15), relating to clarifying remedial measures in response to failure to submit a PUD or PBP Development Plan or to commence construction in accordance with a time schedule set forth in a PUD or PBP Development Plan.

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 heretofore amended, is hereby amended by amending Sections 134-708 and 134-741(15), relating to clarifying remedial measures in response to failure to submit a PUD or PBP Development Plan or to commence construction in accordance with a time schedule set forth in a PUD or PBP Development Plan, as follows:

Sec. 134-708. Failure to submit development plan or to commence construction.

If the developer fails either (i) to submit a development plan within the time requirements of section 134-696 of this division or (ii) to commence construction in accordance with the time schedule set forth in the development plan, a public hearing ~~shall~~ may be scheduled before the plan and zoning commission regarding such failure, and the developer shall be served prior notice thereof by certified mail. At such ~~meeting~~ hearing the commission shall consider all circumstances relevant to the developer's failure and ~~shall~~ may vote to recommend to the city council that appropriate remedial measures be initiated, which measures may include (i) the initiation of rezoning of the subject property to the zoning classification effective immediately prior to the rezoning of the subject property to a PUD district classification, and/or (ii) referral of the matter to the legal department for institution of enforcement proceedings in the courts pursuant to sections 134-31 and 134-32. Upon receipt of the recommendations of the commission, the city council ~~shall~~ may act to initiate remedial measures in conformity to the commission's recommendations or to initiate such other remedial measures as the council determines to be reasonably necessary under the circumstances.

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Sec. 134-741. Commission review and council approval of rezoning, conceptual and development plans.

Applications for rezoning and conceptual plans for the PBP planned business park district shall require review by the commission and approval by the council for compliance with this division prior to the issuance of a building permit. The following procedures shall be followed:

- (15) *Failure to submit development plan or to commence construction; remedial measures.* If the developer fails either (i) to submit a development plan within the time requirements of subsection (5) of this section or (ii) to commence construction in accordance with the time schedule set forth in the development plan, a public hearing ~~shall~~ may be scheduled before the plan and zoning commission regarding such failure, and the developer shall be served prior notice thereof by certified mail. At such ~~meeting~~ hearing the commission shall consider all circumstances relevant to the developer's failure and ~~shall~~ may vote to recommend to the city council that appropriate remedial measures be initiated, which measures may include (i) the initiation of rezoning of the subject property to the zoning classification effective immediately prior to the rezoning of the subject property to a PBP district classification, and/or (ii) referral of the matter to the legal department for institution of enforcement proceedings in the courts pursuant to sections 134-31 and 134-32 of this chapter. Upon receipt of the recommendations of the commission, the city council ~~shall~~ may act to initiate remedial measures in conformity to the commission's recommendations or to initiate such other remedial measures as the council determines to be reasonably necessary under the circumstances.

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

FORM APPROVED:



Lawrence R. McDowell
Deputy City Attorney