

Date May 22, 2017

**RESOLUTION SCHEDULING HEARING ON PROPOSED AMENDMENTS TO THE ZONING ORDINANCE REGARDING SALE OF CONSUMER FIREWORKS**

WHEREAS, the City Plan and Zoning Commission will hold a public hearing held on June 1, 2017, to provide a recommendation to City Council regarding the proposed adoption of Section 134-1281 and amendments to Sections 134-1087, 134-1122 and 134-1267 of the Zoning Ordinance of the Des Moines Municipal Code to allow the sale of consumer fireworks as a principal permitted use, and not as a permitted accessory use or in the Downtown Overlay District, in industrial zoning districts ("M-1" Light Industrial District and "M-2" Heavy Industrial District) in accordance with recently adopted Iowa legislation; and

WHEREAS, the proposed text amendments are attached hereto and on file in the office of the City Clerk.

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

1. The City Council shall consider the proposed adoption of Section 134-1281 and amendments to Sections 134-1087, 134-1122 and 134-1267 of the Zoning Ordinance of the Des Moines Municipal Code at a public hearing to be held in the Council Chambers at the Richard A. Clark Municipal Service Center (MSC), located at 1551 E. Martin Luther King, Jr. Parkway, Des Moines, Iowa, at 11:00 a.m. on June 2, 2017, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said hearing in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

FORM APPROVED:

*Glenna K. Frank*  
 \_\_\_\_\_  
 Glenna K. Frank, Assistant City Attorney

MOVED by \_\_\_\_\_ to adopt.

**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.

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

MOTION CARRIED APPROVED

\_\_\_\_\_  
 Mayor

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

**Sec. 134-1087. Principal permitted uses.**

Only the following uses of structures or land shall be permitted in the M-1 light industrial district:

- (1) Any use permitted in and as limited in the M-3 district.
- (2) Any use permitted in and as limited in the C-3A and C-3 districts, except no new residential uses shall be permitted, unless accessory to a permitted principal use.
- (3) Any use such as assembly, manufacturing, machine shops, welding or other metal working shops, laboratories, warehousing or similar use, which occurs entirely within a completely enclosed building, subject to the following limitations:
  - (a) No part of the use is a residential use.
  - (b) Any use permitted in the C-3A district must conform to the limitations applicable to such use in the C-3A district.
  - (c) No odors, gases, noise, vibration, pollution of air, water or soil, or lighting is emitted onto any adjoining property so as to create a nuisance.
  - (d) The owner or occupant has provided the community development department with a written statement upon a form acceptable to the community development director which describes the use to occur upon the property and the nature of any odors, gases, noise, vibration, and other environmental impacts that may be generated by such use, and which certifies that the use upon the property will be operated in a manner that does not permit any odors, gases, noise, vibration, pollution of air, water or soil, or lighting to be emitted onto any adjoining property so as to create a nuisance.
  - (e) The use shall be operated in strict conformance with the statement provided pursuant to paragraph (d), above.
- (4) Contractor's equipment storage yard or plant; truck terminal or storage yard; rental of equipment commonly used by contractors; and storage yards for vehicles of a delivery or hauling service, subject to the following requirements:
  - (a) All areas used for outside storage shall be designed to allow no part of any stored material, vehicles or equipment to encroach into the required setbacks, and shall be maintained with both a dustless surface and a drainage system approved by the city engineer;
  - (b) All areas used for outside parking of vehicles shall be set back 10 feet and screened by a 6 foot high solid opaque fence from any adjoining R district or portion of a PUD district designated for residential use; shall be set back 5 feet from any adjoining streets and alleys; and, shall be maintained with both a dustless surface and a drainage system approved by the city engineer, unless a higher standard is imposed by the site plan regulations in Chapter 82.
  - (c) All driveways, parking lots and areas used for temporary storage of vehicles shall be surfaced with an asphaltic or Portland cement binder pavement or such other surfaces as shall be approved by the city engineer so as to provide a durable and dustless surface, and shall be so graded and drained as to dispose of all surface water accumulation within the area. (d) No

outside storage of inoperable or unsafe vehicles in quantities constituting a junk yard as defined by section 134-3.

- (5) Circus, carnival or similar transient enterprise, provided such structures or buildings shall be at least 200 feet from any R district or portion of a PUD district designated for residential use.
- (6) Coalyard, cokeyard or woodyard.
- (7) Concrete mixing, concrete products manufacture.
- (8) Flammable liquids, underground storage only, not to exceed 25,000 gallons, if located not less than 200 feet from any R district or portion of a PUD district designated for residential use.
- (9) Livery stable or riding academy.
- (10) Sawmill, planing mill, including manufacture of wood products not involving chemical treatment.
- (11) Off-premises advertising signs.
- (12) Communication towers and antennas subject to section 134-1095 of this division.
- (13) Retail sales of Consumer Fireworks, as defined in chapter 46 of this code, only during the dates and times as allowed under Iowa Code Chapter 727.

(O.7226, 7830, 8215, 8242, 9213, 10,279, 10,391, 10,617, 10,940, 11,009, 11,069, 11,376, 11,449, 11,613, 11,761, 12,025, 13,072, 13,377, 13,484; C91, § 2A-20(A), C00, § 134-1087; O.14,450)

#### **Sec. 134-1122. Principal permitted uses.**

In the M-2 heavy industrial district, the use of structures and land shall be subject to the following regulations:

- (1) No occupancy permit shall be issued for any use in conflict with any city ordinance or state law regulating nuisances.
- (2) No occupancy permit shall be issued for any dwelling, school, hospital, clinic, or other institution for human care, except where incidental to a permitted principal use or as permitted by section 134-1088.
- (3) Any use permitted in and as limited in the M-1 light industrial district is permitted in the M-2 district.
- (4) Land application of petroleum contaminated soil is permitted in the M-2 district subject to compliance with the Iowa Administrative Code. *See IAC §567-120.7.*
- (5) Any other use not permitted in the M-1 light industrial district, or which does not comply with the limitations on such use applicable in the M-1 district, is permitted in the M-2 heavy industrial district only upon approval by the board of adjustment after public hearing. In its determination upon the particular uses at the location requested, the board of adjustment shall consider all of the following:
  - a. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing or working in adjoining or surrounding property;
  - b. Such use shall not impair an adequate supply of light and air to surrounding property;
  - c. Such use shall not unduly increase congestion in the streets, or public danger of fire and safety;

- d. Such use shall not diminish or impair established property values in adjoining or surrounding property;
- e. Such use shall be in accord with the intent, purpose and spirit of this chapter and the comprehensive plan;
- f. All driveways, parking lots and areas used for temporary storage of vehicles shall be surfaced with an asphaltic or Portland cement binder pavement or such other surfaces as shall be approved by the city engineer so as to provide a durable and dustless surface, and shall be so graded and drained as to dispose of all surface water accumulation within the area.
- g. All areas outside a completely enclosed building used for the storage of inoperable or unsafe vehicles, junk or salvage materials shall be enclosed on all sides by a solid opaque fence and gates at least eight feet in height and of uniform design and color, and should be effectively screened from public view. If such area abuts an area upon the adjoining property which is also used for the storage of inoperable or unsafe vehicles, junk or salvage materials, no fence or setback is required along the common property line while such adjoining use continues. All fences shall be maintained in good repair.
- h. Junk and salvage materials shall not be stacked higher than the perimeter fence within 75 feet of the fence and shall not be stacked higher than 25 feet.
- i. The dismantling or repair of vehicles shall occur only upon a impermeable surface with adequate provision for the collection and disposal of fluids and wastes.
- j. Any junk or salvage yard shall provide a paved area for the receipt and temporary storage of material which is screened from the adjoining public right-of-way.
- k. The best practical control technology shall be employed to minimize any obnoxious or offensive odor, dust, smoke, gas, noise, or similar nuisance generated by the proposed use, and the best practical means known shall be employed for the disposal of refuse matter.

(6) Retail sales of Consumer Fireworks, as defined in chapter 46 of this code, only during the dates and times as allowed under Iowa Code Chapter 727.

(O.7226, 7554, 7826, 7830, 8215, 8131, 9022, 9213, 10,194, 10,617, 10,940, 11,009, 11,069, 11,368, 11,376, 11,921, 12,025, 13,072; C91, § 2A-21(A); C00, § 134-1122; O.14,450)

**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.
- (14) Retail sales of Consumer Fireworks, as defined in chapter 46 of this code.

(C00, § 134-1267; O.15,060)

**Sec. 134-1281. Regulation of sales of fireworks.**

- (1) Retail sales of Consumer Fireworks, as defined in chapter 46 of this code, shall be permitted only in those zoning districts where such sales are specifically classified as permitted uses by applicable district regulations.
- (2) In each zoning district where retail sales of Consumer Fireworks, as defined in chapter 46 of this code, are classified as a permitted use, such sales shall be permitted only as a principal permitted use and not as an accessory use.
- (3) In each zoning district where retail sales of Consumer Fireworks, as defined in chapter 46 of this code, are classified as a permitted use, such sales shall be undertaken in full compliance with chapter 46 of this code.