

★ Roll Call Number

Agenda Item Number  
49D

Date September 23, 2019

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 2-923, 10-5, 10-43, 14-180, 14-183, 18-56, 18-137, 26-302, 26-303, 26-802, 26-805, 30-291, 30-293, 30-334, 42-56, 42-86, 42-254, 42-258, 42-553, 42-555, 50-35, 78-10, 78-61, 78-67, 78-74, 82-1, 82-3, 82-41, 82-77, 98-75, 98-76, 98-116, 102-191, 102-359, 102-379, 102-608, 102-1010, 114-361.02, and 114-632, and by repealing Sections 82-206 through 82-219, to reflect cross references relating to the adoption of said proposed Zoning Ordinance and Planning and Design Ordinance",

which was considered and voted upon under Roll Call No. 19- 1450 of September 9, 2019; again presented.

Moved by \_\_\_\_\_ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
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

18-1450  
49D

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 2-923, 10-5, 10-43, 14-180, 14-183, 18-56, 18-137, 26-302, 26-303, 26-802, 26-805, 30-291, 30-293, 30-334, 42-56, 42-86, 42-254, 42-258, 42-553, 42-555, 50-35, 78-10, 78-61, 78-67, 78-74, 82-1, 82-3, 82-41, 82-77, 98-75, 98-76, 98-116, 102-191, 102-359, 102-379, 102-608, 102-1010, 114-361.02, and 114-632, and by repealing Sections 82-206 through 82-219, to reflect cross references relating to the adoption of said proposed Zoning Ordinance and Planning and Design Ordinance.

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 2-923, 10-5, 10-43, 14-180, 14-183, 18-56, 18-137, 26-302, 26-303, 26-802, 26-805, 30-291, 30-293, 30-334, 42-56, 42-86, 42-254, 42-258, 42-553, 42-555, 50-35, 78-10, 78-61, 78-67, 78-74, 82-1, 82-3, 82-41, 82-77, 98-75, 98-76, 98-116, 102-191, 102-359, 102-379, 102-608, 102-1010, 114-361.02, and 114-632, and by repealing Sections 82-206 through 82-219, to reflect cross references relating to the adoption of said proposed Zoning Ordinance and Planning and Design Ordinance, as follows:

**Chapter 2 ADMINISTRATION\***

**Sec. 2-923. Duties of community development director.**

The community development director shall be responsible in the community development department for the following:

- (1) The enforcement of vector, sanitation, housing, zoning, planning and design, building, electrical, plumbing, mechanical, and steam power equipment codes and the issuance of all permits and the inspection of all work done under the provisions of such codes and the safety inspection of all premises.
- (2) Planning activities.
- (3) Providing assistance to the city plan and zoning commission in accordance with section 82-40 of this Code.
- (4) Housing rehabilitation, housing counseling and loan services.

- (5) The administration and enforcement of energy and water use benchmarking.

**Sec. 10-5. Conduct of outdoor service.**

No person or club holding an outdoor service license or permit nor his or her agents or employees shall do any of the following:

- (1) Operate an outdoor service area without at least one agent or employee being present in the area at all times.
- (2) Except in a ~~C-3~~DX1, DX2 or DXR zoned area, operate an outdoor service area between the hours of 11:00 p.m. and 9:00 a.m.
- (3) In a DX1, DX2 or DXR ~~C-3~~-zoned area, operate an outdoor service area between the hours of 11:00 p.m. and 9:00 a.m., Sunday through Thursday, and between the hours of 12:30 a.m. and 9:00 a.m. on Friday and Saturday.
- (4) Allow or use amplified sound when the outdoor area is within 50 feet of a real property boundary used for residential purposes.
- (5) Fail to comply with the applicable sections of chapter 42 and article II of chapter 98 of this Code.
- (6) Fail to comply with the lighting provisions as established in chapter ~~134~~135 of this Code.
- (7) Reduce the required number of parking spaces on the site.

**Sec. 10-43. Conditions for approval.**

The following conditions and regulations must be met by an applicant for a liquor control license or a wine or beer permit:

- (1) The applicant must give consent in writing on the application that members of the fire and police departments and the building inspector may enter upon the premises without warrant to inspect for violations of the provisions of state law and of this chapter.
- (2) The premises for which a liquor control license, or a wine or a beer permit is sought must be located within an area where such business is permitted by chapter 134 of this Code and must otherwise conform to the city zoning requirements.
- (3) The premises of a class B beer permit shall, at the time of the application, continue to be equipped with sufficient tables and seats to accommodate 25 persons at one time.
- (4) All permits and licenses provided for in this chapter shall be displayed in a conspicuous place on the premises of the permit or license holder and at all times shall be subject to inspection.
- (5) No liquor control license or a wine or beer permit shall be approved for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations.
- (6) Licensed premises located outside the DX1, DX2 and DXR ~~C-3, C-3A, C-3B, C-3R and D-R~~-zoning districts shall conform with the following:
  - a. In addition to subsections (1) through (8) of this section, neither class A, B, C or special class C licenses nor class B beer permits shall be granted for premises which are not operated as a restaurant at least half of whose gross

- income is derived from the sale of prepared food and food-related services and which are located within 150 feet of any church, school, public park or licensed child care center as defined by I.C. ch. 237A.
- b. No class B, B native or C native wine permit, class C beer permit, or class E liquor license shall be granted to an applicant whose premises are within 75 feet of any church, school, or public park or licensed child care center as defined by I.C. ch. 237A.
  - c. In determining the distances set out in this subsection, measurements shall be taken on a direct line from the nearest property line of the premises upon which the place of business of an applicant for a permit or license is located and over which such applicant has control, to the nearest property line of the parcel of real estate upon which the church, public park, licensed child care center or school building is situated. These area restrictions shall not affect the right of present permit or license holders who have qualified under the rules heretofore in effect, or their successors by purchase, from renewing their permits or licenses in their present locations.
- (7) a. Except in the DX1, DX2 and DXRC-3, C-3A, C-3B, C-3R and D-R zoning districts, neither new permits or licenses nor transfers of existing permits or licenses, other than class C beer permits and class E liquor licenses, will be granted for locations not currently operating under a permit or license, unless 75 percent of the property abutting on both sides of the same street as the premises for which the license or permit is requested and extending 200 feet to the right and left from the center point of such premises facing such street is either currently put to a commercial use or is commercially zoned by chapter 134 of this Code. An exception to this restriction is permitted where the applicant's premises are operated as a restaurant, at least half of the gross income of which is derived from the sale of prepared food and food-related services.
- b. In measuring the distances in subsection (7)a. of this section, rights-of-way of intersecting city streets and alleys shall be excluded.
  - c. Where the premises involved are located on a corner lot at the intersection of two streets, it will be sufficient if the usage or zoning so measured along either intersecting street meets the requirements of subsection (7)a. of this section.
- (8) The area restrictions set forth in this section shall not affect the right of present permit or license holders or their successors by purchase from renewing their permits or licenses in their present locations. No property whose principal structure shall be used wholly or in part for residence purposes shall be deemed actually devoted to commercial use unless more than 50 percent of the gross floor area of the structure shall be devoted to commercial use.
- (9) The subsections of this section concerning the location of new or transferred permits and licenses shall not apply to an application for a permit or license by a college or university where 75 percent of the real estate, exclusive of street rights-of-way, within 200 feet of the structure for which the permit or license is sought, is owned by the college or university.

- (10) a. Subsections (2) and (3) of this section shall not apply to a person who makes application for a class C liquor license, a class B beer permit, a class B wine permit, or a class B or C native wine permit in connection with the operation of a concession stand or event at a city park designated "community" or "major" by the director of the park and recreation department, or at a city-owned golf course. The city council may approve an application for a class C liquor license, a class B beer permit, a class B wine permit, or a class B or C native wine permit in connection with the operation of a concession stand or event at city parks designated "neighborhood" in special circumstances upon review of the facts and taking into account the recommendation of the park and recreation board.
- b. For the purposes of section 10-47 of this chapter, each park at which an applicant desires to operate a concession stand or event and sell alcoholic beverages shall be deemed a separate place of business for which such applicant shall be required to have a separate license or permit.
- (11) Subsection (2) of this section shall not apply to a club or corporation which makes application for a class A liquor control license in connection with the operation of and located on the land occupied by a private full-sized nine- or 18-hole golf course.
- (12) Subsection (6)a. of this section shall not apply to nonprofit corporations which make application for a five-day, 14-day, seasonal, or Sunday sales liquor control license, where the sale of alcoholic beverages does not occur between the hours of 8:00 a.m. and 5:00 p.m., and where the sale of alcoholic beverages is done on a temporary basis for special events and so as to not comprise greater than 50 percent of the gross revenue for each day alcoholic beverages are sold.
- (13) The required separation from any church, school, public park or licensed child care center imposed by subsection (6)a. of this section, and the requirements of subsection (7)a. of this section, shall not apply to nonprofit corporations which make application for a five-day liquor control license, where the sale of alcoholic beverages occurs only between the hours of 11:00 a.m. and 10:00 p.m., and outside the regular school hours of any school within 150 feet.
- (14) For all class A, B, C or special class C liquor licenses and all class B beer permits the applicant must provide a statement that all designated security employees have received training and certification in security methods. Such training shall be performed and certified to by a third party that is in the training business and shall include a minimum of four hours of training in the following areas: de-escalation techniques, anger management techniques, civil rights or unfair practices awareness as provided in I.C. § 216.7, recognition of fake or altered identification, information on laws applicable to the serving of alcohol at a licensed premises, use of force and techniques for safely removing patrons, and instruction on proper physical restraint methods used against a person who has become combative.

**Sec. 14-180. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Structure* means anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground.

*Entertainment venue* means any structure, or portion thereof, that is used for the gathering of persons for the purpose of entertainment for no more than four three-day periods per year. Any structure used for more frequent gathering of persons for the purposes of entertainment shall be considered as permanent and subject to the building code, zoning, planning and design, and fire code requirements of this code applicable to such permanent use.

*Operator* means any person, group, or organization who is responsible for the organization and operation of an amusement venue.

#### **Sec. 14-183. License application.**

- (a) Every applicant for such license shall apply in writing to the city clerk. Such application shall be submitted at least 30 days prior to the proposed date of commencement of operation of such entertainment venue. The requirement that such an application be submitted at least 30 days in advance may be waived by the city manager upon a written finding by the city manager that the necessary review and inspection of the proposed entertainment venue may be completed within the time remaining and that the expedited review of such application will not interfere with the efficient administration of chapters 134 and 135 of this Code and the building, fire and traffic Codes.
- (b) Every license application shall contain the following information:
  - (1) The name and address of the applicant and that of the operator.
  - (2) If the application is made on behalf of an organization, the name and address of the organization.
  - (3) The names and phone numbers of two contact persons.
  - (4) The proposed dates and hours of operation of the event.
  - (5) An estimate of daily attendance.
  - (6) A description and diagram of the entertainment venue drawn to a scale of one-fourth inch equals one foot zero inches.
  - (7) The name of the company or named of persons to provide security services at the premises.
- (c) The applicant must give consent in writing on the application, which consent shall be binding upon the operator, organizer or owner of the entertainment venue, that city inspector or members of the fire and police departments may enter the structure without warrant to inspect the structure for purposes of determining compliance with this article and all other applicable statutes and ordinances.
- (d) An application to license an entertainment venue must include, in addition to the information required in subsections (b) and (c) of this section, the following:
  - (1) Presentation by the applicant of a certificate of insurance issued by an insurance company licensed to do business in this state, providing general liability insurance coverage in an amount set by the risk management officer per occurrence and aggregate for the injury or death of any person; for damage to property of others; and for acts of negligence by the owner, operator, or his or her agents in the conduct or operation of an amusement house or entertainment venue. The general liability insurance shall be on a comprehensive or commercial form and shall name the city as an additional insured. The certificate of insurance shall also evidence that the

general liability policy may not be cancelled or modified in any way without 30 days' written notice to the city.

- (2) The cancellation or other termination of any insurance policy presented to comply with this subsection shall automatically revoke and terminate the license issued under this article, unless another certificate, complying with this subsection, shall be provided showing insurance in effect at the time of such cancellation or termination.

## **Chapter 18 ANIMALS\***

### **Sec. 18-56. Confinement of high risk dogs.**

- (a) All high risk dogs shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel, except when leashed as provided in this section. Such pen, kennel or structure must have secure sides and a secure top attached to the sides or, in lieu of a top, walls at least six feet in height and at least six feet taller than any internal structure.
- (b) All pens or other structures designed, constructed or used to confine high risk dogs must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure bottom, floor or foundation attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet so as to prevent digging under the walls by the confined dog.
- (c) All structures erected to house high risk dogs must comply with all city zoning, planning and design, and building regulations. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition. No high risk dog may be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition.
- (d) No person shall permit a high risk dog to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than six feet in length. No person shall permit a high risk dog to be kept on a chain, rope or other type of leash outside its kennel or pen unless both the dog and the leash are under the actual physical control of a person 18 years of age or older.
- (e) Such dogs may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.
- (f) Violation of this section is a misdemeanor.

### **Sec. 18-137. Enclosures.**

Any enclosure, pen, coop, or hutch in which pets are maintained shall be cleaned at a minimum of every other day or more often if deemed advisable or necessary by a health officer. They shall be located at a minimum of 25 feet from a neighboring dwelling, as the term "dwelling" is defined in section 134-3-9.7 of this Code. No animal may be enclosed or fenced in the front yard of a dwelling.

## CHAPTER 26. BUILDINGS AND BUILDING REGULATIONS

### Sec. 26-302. Building permit exemptions.

- (a) A building permit shall not be required for the following:
- (1) One-story detached accessory buildings used as tool or storage sheds, playhouses, pet shelters, and similar uses constructed in accordance with the International Residential Code, provided the floor area does not exceed 120 square feet in area and complies with all applicable zoning and planning and design requirements. Such building must be located at least two feet from any property line and three feet from any dwelling.
  - (2) Chain link or wire fences four feet or less in height and all other fences three feet or less in height.
  - (3) Movable cases, counters, and partitions not over five feet nine inches in height.
  - (4) Playground equipment.
  - (5) Retaining walls, which are not over four feet in height, measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding flammable liquids.
  - (6) Retaining walls which are part of a public improvement project regulated by the City Engineer.
  - (7) Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed two to one.
  - (8) Platforms, walks, and driveways not more than 30 inches above grade and not over any basement or story below.
  - (9) Painting, papering, and similar finish work.
  - (10) Temporary motion picture, television and theater stage sets and scenery.
  - (11) Window awnings supported by an exterior wall of one and two family dwellings and accessory structures to one and two family dwellings when projecting not more than 54 inches.
  - (12) Minor maintenance and repair work that is deemed by the building official not to affect structural strength, safety, fire resistance, or sanitation, provided that no such work shall be performed in a manner contrary to any provisions of the building code or any other laws.
- (b) Unless otherwise exempted, separate plumbing, electrical and mechanical permits will be required when appropriate for the exempted items in subsection (a) of this section.
- (c) Exemption from the permit requirements of this section shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of the building code or any other laws or ordinances of this jurisdiction.

### Sec. 26-303. Demolition of buildings and structures.

- (a) Permit required; expiration. A permit shall be required for demolition of buildings and structures in accordance with the following:
- (1) No person shall commence the work of demolishing any building or structure until a permit authorizing such work has been obtained from the building official. Every demolition permit issued under the provisions of this section shall expire by



limitation and become null and void if the work authorized by such permit is not commenced within seven calendar days from the date of issuance, or if the work authorized by such permit is not completed within 30 calendar days of the date of issuance, unless, because of the extensiveness of the project, the building official deems at the time of issuance a longer period for either commencement or completion should be granted.

- (2) Any permittee holding an unexpired demolition permit may request in writing an extension of time within which the demolition work may be commenced or completed. If such request contains good and satisfactory reasons showing that circumstances beyond the control of the permittee have prevented timely commencement or completion of the work, the building official may extend the applicable expiration date.
- (3) Except as provided in this section, a demolition permit that has expired shall be null and void, and before any demolition work is subsequently commenced a new permit therefore shall be obtained. The fee for such permit shall be at the same rate as the original permit.
- (4) If a demolition permit to remove an unsafe building or a building that is the subject of a public nuisance action has expired, the building official shall order the prompt removal of such structure, in accordance with all requirements of this article. All of the costs attendant to this action, including administrative costs, shall be either assessed against the property or collected from the owner unless otherwise directed by the city council.

(b) *Application for permit.* Application for a permit to demolish a building or structure shall be made to the building official. The applicant shall provide the following information:

- (1) The name and address of the person in responsible charge of the work.
- (2) The street address and legal description of the property on which the building or structure is located.
- (3) The name and address of the owner and, when appropriate, his or her legal agent in responsible charge of the property.
- (4) Overall dimensions, number of stories and materials of construction of the building or structure to be demolished.
- (5) A plan showing areas to be protected by fences, barricades, covered walkways, or other protective devices, and details of construction for such devices.
- (6) Location of the site where the demolition debris is to be discarded.
- (7) Approval from other affected city departments or governmental agencies when deemed necessary by the building official and any special conditions or restrictions relating thereto.
- (8) For demolition by explosives, the applicant shall furnish the information required in this subsection and shall furnish information regarding the person who will be conducting the demolition by explosives and shall furnish plans showing how the building or structure will be prepared for demolition, the type and amount of explosives to be used, and a detailed plan showing what safety precautions will be taken to protect persons and property.
- (9) A permit for the demolition of a building or structure by the use of explosives may be issued by the city council subject to the following conditions:

- a. The applicant for a permit must demonstrate to the city council the need for demolition by explosives rather than demolition by conventional means and must demonstrate that demolition by explosives can be safely conducted at the specific location requested.
- b. The building official, fire chief and police chief shall review the application and submit their opinions to the city council concerning whether or not the demolition can be safely conducted, together with any recommendations they may have.
- c. The applicant shall provide a certificate of liability insurance for personal injuries, death and for property damage in an amount not less than \$1,000,000.00 naming the city as an additional named insured party. The certificate shall provide that the coverage shall not be cancelled or changed without ten days' prior written notice to the city. The city council may require additional insurance coverage when the hazard appears greater than normally expected and may also in such instance require the posting of a bond acceptable to the city in an amount commensurate with the severity of the hazard. The bond shall provide that the applicant shall well and satisfactorily perform the demolition. The bond shall be for the benefit of the city and any person who is injured or damaged by the failure of the applicant to satisfactorily perform the demolition.
- d. The applicant shall agree to indemnify and hold harmless the city from all losses resulting from damages or injuries caused by the applicant or the applicant's employees, servants or agents arising out of the use of explosives in demolition.
- e. The applicant shall pay the city in advance for reasonable expenses that will be incurred by the city in furnishing necessary security and police protection in the vicinity of the demolition site.
- f. The applicant shall observe all applicable federal, state and local laws in the course of the demolition, including but not limited to the following:
  - 1. The applicable provisions of the city fire prevention code relating to the storage, transportation and use of explosives.
  - 2. The rules and regulations of the United States Environmental Protection Agency relating to the demolition of buildings or structures containing asbestos materials or other hazardous air pollutants.
- g. The applicant shall meet all other requirements of this article relating to the demolition of structures or buildings; provided, however, that if a conflict exists between the provisions of this subsection and other sections of the city Code, the provisions of this subsection shall be deemed to be controlling.
- h. The applicant need not obtain an obstruction permit as provided in section 26-304 of this article to block off portions of public property within an appropriate distance of the demolition site, provided that the obstruction is for less than a 24-hour period and provided that the obstruction is for security purposes in connection with the use of explosives. However, the

- applicant shall be required to obtain an obstruction permit to use public property in the cleanup operations following the detonation of explosives.
- i. The city council shall at any time have the authority to impose additional requirements and safety precautions in the interest of the public health, safety and welfare.
- (10) Such other information as shall be reasonably required by the building official or community development director, including all information necessary to conduct historic review pursuant to chapter 58, article IV.
- (c) *Disconnection of sewer and water.* No permit to demolish shall be issued until it has been established that existing sewer and/or water services have been properly disconnected and approved.
- (d) *Bond required.*
- (1) Before a permit is issued to remove a building which has been ordered removed as a public nuisance and which period of time granted by the city or by the courts for removal or other remedial action by the applicant or other party of interest has expired, the applicant may be required to post a cash bond equal to the estimated costs of the removal of the building and the disconnection of the existing utility services. If the applicant does not remove the building at the time the permit expires at a time specified by the building official, such bond shall be forfeited and used toward the costs of the city to remove it.
  - (2) If the building is removed by the applicant prior to the time the permit expires, such bond shall be returned to the applicant. A return of the bond does not exempt the applicant from further assessments to the real estate for costs that have occurred prior to the issuance of the permit.
- (e) *General requirements.*
- (1) The building official shall have the authority to impose at any time reasonable requirements and safety precautions in the interest of public health, safety, and welfare which, in his or her opinion, are commensurate with the severity of hazard, either demonstrated or anticipated, provided that such requirements may be appealed to and reviewed by the board of appeals at the request of the affected party.
  - (2) In addition, the following shall be met:
    - a. The discharging, loading, or dumping of building materials from any building shall be accomplished in such manner as to minimize the creation of dust and scattering of debris. Materials shall not be dropped by gravity to any point lying outside the building walls except through an enclosed chute, unless such materials are dust free and the height of drop is at least equal to the horizontal distance to the nearest property or barricade line. Where such horizontal distance is not available and practical necessity dictates the dropping of relatively large masses of materials, the building official may approve appropriate protective measures designed to provide protection from danger equivalent to that afforded by the otherwise required horizontal setback; provided, however, that in all cases such materials shall be handled in a manner approved by the air pollution control division of the county health department.

- b. When necessary to protect the public health, safety, or welfare, every demolition project shall be barricaded, fenced, lighted, and signed with warning and/or directional signs in a manner approved by the building official. The building official may also require the presence of approved security guards or flag persons. Such barricades, fences, lights, and signs as may be deemed necessary by the building official for protection of the public shall be maintained after completion of the demolition work until such time as the site is cleaned of all debris and all excavations, basements, and depressions in the ground are restored to grade and rendered harmless.
  - c. Adequate precautions shall be taken to ensure that procedures or conditions relating to the demolition work do not constitute a fire hazard. If, in the opinion of the fire chief, a fire hazard exists or is likely to exist, he or she may order the cessation of work or require that appropriate protective measures approved by him or her be taken.
  - d. All streets, alleys, and public ways adjacent to the demolition site shall be kept free and clear of any rubbish, refuse, and loose material resulting from the demolition work unless an obstruction permit for such space has been obtained.
  - e. Demolition of structures subject to public nuisance action shall include removal of all footing and foundation materials unless otherwise approved by the building official.
  - f. Upon completion of the demolition work, the site shall be left in a clean, smooth condition. Inorganic building rubble, sand, clean earth, or other approved fill material may be used to fill excavations, basements, and depressions, provided that the top 12 inches shall be clean earth or its equivalent in terms of surface smoothness, free from dust, and cleanliness. If the surface is to be used for the parking of vehicles, it shall be constructed as required in chapter ~~134-135~~ of the city Code pertaining to zoning planning and design.
- (3) No permit to demolish shall be issued until a grading permit, waiver of grading permit, or a solid waste disposal site license is obtained for any location within the city where the demolition debris is to be discarded.

**Sec. 26-802. Sign and billboards permits required.**

- (a) Except as provided in this division, it shall be unlawful for any person to erect, alter, relocate or maintain within the city any sign or sign structure, as defined in section 26-800, without first obtaining a permit issued by the zoning enforcement officer and making payment of the permit fee provided in this division.
- (b) A sign permit shall not be required for the following:
  - (1) Identification signs, ~~as defined in chapter 134 of the city Code~~, not exceeding one square foot in area.
  - (2) Memorial signs on buildings, showing only the building's name and date of erection, when such sign is carved into or made an integral part of the exterior of the building or when such sign is constructed of bronze or other metal alloy and securely and permanently attached to such building.

- (3) A sign that is painted on or attached to an operative self-propelled vehicle.
- (4) Flags bearing only the official design or recognized symbol of a governmental entity, an educational institution, or a company or other organization.
- (5) Traffic or other municipal signs such as legal notices, railroad crossings, danger and other emergency signs as may be approved by the enforcement authority.
- (6) For the replacement of the removable display board or other removable display surface of a sign having a stationary framework or structure so designed that a display board or panel or other display surface may be inserted therein or attached thereto or removed whenever desired without unfastening or removing the stationary framework or structure from its supports.
- (7) Private traffic direction signs directing traffic movement into a premises or within a premises, provided such signs do not exceed four square feet in area and are not illuminated.
- (8) Horizontal directional signs painted on or installed flush with paved areas.
- (9) Non-illuminated real estate signs with an area of six square feet or less.
- (c) The permit fee for every sign permit required by this division shall be in the amount set in the Schedule of Fees adopted by the city council by resolution.
- (d) Every sign, whether existing or erected, shall be classified by the zoning enforcement officer according to its type as a "combination," "ground," "pole," "projecting," "roof," "wall" or "fascia," or "marquee" sign.

**Sec. 26-805. Construction.**

- (a) *Generally.* The supports for all signs or sign structures shall be placed in or upon private property and shall be securely built, constructed, and erected in conformance with the requirements of the International Building Code.
- (b) *Materials.* Materials of construction shall be as follows:
  - (1) Materials of construction for signs and sign structures shall be of the quality and grade as specified for buildings in the International Building Code.
  - (2) In all signs and sign structures, the materials and details of construction shall, in the absence of specified requirements conform with the following:
    - a. Structural steel shall be of such quality as to conform with the International Building Code. Secondary members in contact with or directly supporting the display surface may be formed of light gauge steel, provided such members are designed in accordance with the specifications of the design of light gauge steel as specified in the International Building Code and, in addition, shall be galvanized. Secondary members, when formed integrally with the display surface shall be not less than no. 24 gauge in thickness. When not formed integrally with the display surface, the minimum thickness of the secondary members shall be no. 12 gauge. The minimum thickness of hot-rolled steel members furnishing structural support for signs shall be one-fourth inch, except that if galvanized such members shall be not less than one-eighth inch thick. Steel pipes shall be of such quality as to conform with International Building Code. Steel members may be connected with one galvanized bolt provided the connection is adequate to transfer the stresses in the members.

- b. Anchors and supports when made of wood and embedded in the soil or within six inches of the soil shall be of all heartwood of a durable species or shall be pressure treated with an approved preservative. Such members shall be marked or branded by an approved agency.
- (c) *Restriction on combustible materials.*
  - (1) All signs and structures erected in fire zone no. 1 shall have structural members of noncombustible materials. Ground signs may be constructed of any material meeting the requirements of the International Building Code, except as provided in subsection (b) of this section.
  - (2) Roof signs, wall signs, projecting signs, and signs on marquees shall be constructed of noncombustible materials, except as provided in subsection (d) of this section. No combustible materials other than approved plastics shall be used in the construction of electric signs.
- (d) *Nonstructural trim.* Nonstructural trim and portable display surfaces may be of wood, metal, approved plastics, or any combination thereof.
- (e) *Anchorage.*
  - (1) Members supporting unbraced signs shall be so proportioned that the bearing loads imposed on the soil in either direction, horizontal or vertical, shall not exceed the safe values. Braced ground signs shall be anchored to resist the specified wind load acting in any direction. Anchors and supports shall be designed for safe bearing loads on the soil and for an effective resistance to overturning. Anchors and supports shall penetrate to a depth below ground greater than that of the frostline. Portable ground signs supported by frames or posts rigidly attached to the base shall be so proportioned that the weight and size of the base will be adequate to resist the wind pressure specified in the International Building Code. Signs attached to masonry, concrete, or steel shall be safely and securely fastened thereto by means of metal anchors, bolts, or approved expansion screws of sufficient size and anchorage to support safely the loads applied.
  - (2) No wooden blocks or plugs or anchors with wood used in connection with screws or nails shall be considered proper anchorage, except for signs attached to wood framing.
  - (3) No anchor or support of any sign shall be connected to or supported by an unbraced parapet wall, unless such wall is designed in accordance with the requirements for parapet walls specified in Chapter 16 of the International Building Code.
  - (4) Adjustable turnbuckles shall be safely secured to prevent movement.
- (f) *Display surfaces.* Display surfaces in all types of signs may be made of metal, glass, or approved plastics, except that glass shall not be used in any pole or projecting signs. Glass thickness and area limitations shall be as set forth in table no. 4-A in this section. Sections of approved plastics on wall signs shall not exceed 150 square feet in area. Exceptions:
  - (1) In fire zone no. 3 the area may be increased by 50 percent.
  - (2) Sections of approved plastics on signs other than wall signs may be of unlimited area if approved by the building official.

TABLE NO. 4-A SIZE, THICKNESS AND TYPE OF GLASS PANELS IN SIGNS

Maximum Size of Exposed Glass Panel			
Any Dimension (in inches)	Area (in square inches)	Minimum Thickness of Glass (in inches)	Type of Glass
30	500	1/8	Plain, plate or wired glass
45	700	3/16	Plain, plate or wired glass
144	3,600	1/4	Plain, plate or wired glass
Over 144	Over 3,600	1/4	Wired glass

- (g) *Approved plastics.* The zoning enforcement officer shall require that sufficient technical data be submitted to substantiate the proposed use of any plastic material and, if it is determined that the evidence submitted is satisfactory for the use intended, he or she may approve its use.
- (h) *Concealment of structural framework.* No structural framework of any sign shall be covered or concealed.
- (i) *Electrical wiring.* All signs containing electrical wiring shall be subject to all provisions of the electrical code.
- (j) *Maintenance and repair.* All signs, together with all of their supports, braces, guys, and anchors, shall be kept in repair and in a proper state of preservation. The display surfaces of all signs shall be kept neatly painted or posted at all times.
- (k) *Name of erector and date of erection.* Every ~~off-premises sign~~ general advertising sign, as defined in chapter 134 of the city Code, and every sign which projects over any public right-of-way erected after the effective date of the ordinance from which chapter 134 of the city Code derives January 1, 1966, shall have painted or otherwise attached on the exterior of the sign the name of the sign erector and date of erection. Such name and date shall be of sufficient size and contrast to be easily read from a reasonable distance.

### Chapter 30 BUSINESSES\*

#### Sec. 30-291. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Automated pawn records system* means the records system utilized by the police department to track pawn transactions by pawnbrokers.

*Negative police report* means a report or review compiled by the chief of police or his or her designee which discloses a criminal record of a felony or any conviction under this division two or more times in a calendar year or a conviction under I.C. ch. 714 or failure to have a computer that has internet access and the capability to utilize the automated pawn records system.

*Negative zoning enforcement officer report* means a report or review compiled by the zoning enforcement officer or his or her designee which discloses non-compliance with zoning requirements contained in Chapter 134 or site plan requirements or guidelines contained in Chapter ~~82-135~~ of the Des Moines Municipal Code.

*Pawnbroker* means every person who makes loans or advancements upon pawn, pledge or deposit of personal property or who receives actual possession of personal property as security for loans, with or without a mortgage or bill of sale thereon, or who by advertisement, sign or otherwise holds himself or herself out as a pawnbroker.

*Positive police report* means a report or review compiled by the chief of police or his or her designee which does not disclose a criminal record of a felony or any conviction under this division two or more times, in a calendar year, or a conviction under I.C. ch. 714.

### **Sec. 30-293. License criteria.**

Upon receipt of a pawnbroker license application, the city clerk shall forward a copy of the application to the chief of police and the zoning enforcement officer or their designees who shall review the application. The applicant shall furnish such evidence as may reasonably be required in support of the statements set forth in the application. The chief of police and the zoning enforcement officer or their designees shall report to the city clerk within 30 days of receipt of the application considering but not limited to the criteria of whether:

- (1) The applicant or his or her agent or employee charged with receiving or distributing property has been convicted of a felony. However, if the conviction of a felony occurred more than five years before the application for a pawnbroker license and if such person's rights of citizenship have been restored by the governor, such conviction shall not be a bar to obtaining a pawnbroker license;
- (2) The applicant has truthfully reported all relevant facts within the pawnbroker application;
- (3) The applicant has such financial standing and good reputation to indicate that he or she will comply with all the laws of the state and the city; and
- (4) The applicant has a computer that can access the internet and utilize the automated pawn records system.
- (5) The pawnbroker's business complies with zoning requirements contained in chapter 134 and all relevant site plan regulations and guidelines contained in Chapter ~~82-135~~ of the Des Moines Municipal Code.

### **Sec. 30-334. Screening requirements for used merchandise collection centers.**

- (a) Any business or other organization which engages in distributing and/or selling used merchandise, including but not limited to used clothing, furniture, machinery, garden equipment or tools, resulting in deliveries of such merchandise during closed business hours, whether such deliveries are permitted or not permitted by the manager or owner of the business, shall provide an area enclosed on all sides by:
  - (1) Using existing building walls in conjunction with a solid opaque fence not less than six feet high of uniform design and uniform color with a self-closing gate; or
  - (2) A freestanding opaque fence designed as described in this subsection, including the gate.



- (b) Such fence shall substantially screen the area used for delivery of used merchandise from public view and shall conform to zoning, planning and design, and all other applicable state and local statutes, ordinances and rules and regulations. However, any ordinance, rule or regulation in conflict with this section shall be waived to the extent necessary to permit the erection of the fence when the planning director and the city engineer authorize in writing that the location of the fence does not interfere with pedestrian and vehicular circulation on the property or adjoining property and on public streets and does not create a public safety hazard. This section shall not apply if the place of delivery cannot be directly viewed by the occupants of any residence or by the patrons of a business or professional establishment.

## **Chapter 42 ENVIRONMENT\***

### **Sec. 42-56. Site plans and subdivisions.**

Except as permitted under section 42-86 of this article, no site plan or subdivision shall be approved or conditionally approved in accordance with article 9 of chapter 135 or with sections ~~82-207~~, 106-72(j) and 106-102(n) of this Code, respectively, unless such site plan or subdivision shall include soil erosion and sediment control measures consistent with the requirements of this article and related land development regulations.

### **Sec. 42-86. Permits required.**

- (a) No person other than authorized city personnel or city contractors shall grade, strip, excavate, fill, stockpile or cause any non-agricultural earth change on any site, or install drainage pipe in public or private drainageways, without a grading permit issued by the city engineer for any of the following:
- (1) Platting of land pursuant to chapter 106, pertaining to subdivisions, of this Code.
  - (2) Development of land for which a site plan is required, pursuant to ~~article 9~~ of chapter 82-135 of this Code.
  - (3) Installation of utility improvements in trenches that are greater than one foot in width or underground appurtenances with an excavated surface area greater than 400 square feet by a public or private utility company.
  - (4) Excavation or the creation of any disturbed surface of 500 square feet or more of cumulative area within 100 feet of a lake, pond, river, stream, recognized drainageway or within the defined flood fringe of a river or stream.
  - (5) Excavation, fill, or grading that modifies or alters the flow of stormwater and which effects adjacent or abutting property.
  - (6) Any excavation or cause of earth change more than an average of two feet in depth across 2,500 square feet or more of area, or creation of a disturbed area more than 20,000 square feet in area, excluding basement excavations and backfill, utility service connections for one- or two-family residential dwellings, and utility trenches no greater than one foot in width. This exception does not apply to construction activity which is part of a larger common plan of development that requires a NPDES General Permit No. 2.

- (7) Any fill of dirt, stone, brick, concrete, soil or similar material covering a cumulative area larger than 2,500 square feet.
- (8) Stockpiling of any granular construction material in excess of 5,000 cubic yards on any site.
- (b) A grading permit will not be necessary for any of the activities identified in subsection (a) where, prior to formal application, the applicant receives from the city engineer a written statement that the planned work or final structures or topographical changes, as presented by the applicant to the city engineer prior to formal application, will not result in or contribute to accelerated soil erosion or sedimentation, will not significantly interfere with any existing drainage course, and will comply with the requirements of the tree removal and mitigation ordinance codified in Article X of Chapter 42 of this Code. A grading permit will also not be required for work performed by city crews or for city construction projects under direct control of the city engineer.
- (c) Persons exempt from permitting requirements are nonetheless subject to illicit discharge regulations found in article IX of this chapter.

**ARTICLE IV. Noise Control**

**Sec. 42-254. Maximum permissible sound levels by receiving land use; immediate threat.**

- (a) *Maximum permissible sound levels.* With the exception of sound levels elsewhere specifically authorized or allowed in this article, no person shall make, continue, or cause to be made or continued, any sound which exceeds the following sound level limits at or within the real property boundary of a receiving land use:

TABLE 1. SOUND LEVELS BY RECEIVING LAND USE

Zoning Category of Receiving Land Use	Time	Sound Level Limit Unamplified limit in dBA Amplified limit in dBC
P1 and Residential zones: <del>R1-80 to R-6, R-HDN1-N5,</del> NX1-NX3, NX2a, NM, and a residential legacy PUD	7:00 a.m. to 10:00 p.m.	60
	10:00 p.m. to 7:00 a.m.	50
Mixed use and commercial zones: Legacy PUD, DX1, DX2, DXR, MX1-MX3, CX to C-4	At all times	65
Industrial zones: M-1 to M-3EX, I1, I2	At all times	75
Noise sensitive area	At all times	55
<del>U-1 floodplain or FW</del> floodway flood district	At all times	65

For the purposes of this article, unamplified sound levels in excess of the dBA and amplified sound levels in excess of the dBC listed in table 1 shall be deemed a violation, except this subsection shall not apply to:

- (1) Activities covered by the following sections of this article: 42-255 (emergency signaling devices); 42-259 (motorized vehicles); 42-260 (construction); 42-261 (stationary non-emergency signaling devices); 42-264 (noise covered by sound variance).
  - (2) The operation of the following domestic power tools or equipment between the hours of 7:00 a.m. and 10:00 p.m.:
    - a. Electrical power tools.
    - b. Motor-powered, muffler-equipped lawn, garden and tree trimming equipment.
- (b) *Immediate threat.*
- (1) The official of any department charged with enforcement of this article shall order an immediate halt to any sound which exposes any person, except those excluded under subsection (2) of this section, to continuous sound levels in excess of those shown in table 2 or to impulsive sound levels in excess of those shown in table 3. If the sound has not abated within a reasonable length of time following issuance of such an order, the official of any department charged with enforcement of this article may apply to the appropriate court for an injunction to replace the order or may treat the violation in the manner of other Code violations.
  - (2) No order under subsection (b)(1) of this section shall be issued if the only persons exposed to sound levels in excess of those listed in tables 2 and 3 are exposed as a result of:
    - a. Trespass;
    - b. Invitation upon private property by the person causing or permitting the sound; or
    - c. Employment by the person or contractor of the person causing or permitting the sound.
  - (3) Any person subject to an order issued pursuant to subsection (b)(1) of this section shall comply with such order until:
    - a. The sound is brought into compliance with the order as determined by the noise control division; or
    - b. A judicial order has superseded such order.

TABLE 2. CONTINUOUS SOUND LEVELS WHICH POSE AN IMMEDIATE THREAT TO HEALTH AND WELFARE  
(Measured at 50 Feet)

Sound Level Limit (dBA)	Duration
90	24 hours
93	12 hours
96	6 hours
99	3 hours

102	1.5 hours
105	45 minutes
108	22 minutes

- (4) Correction for character of sound. For any source of sound which emits a pure tone, the maximum sound level limits set forth in table 2 shall be reduced by five dBA.
- (5) Varying sound level. Where the sound level (dBA) varies over the measuring period, the equivalent A-weighted (average) sound level ( $L_{eq}$ ) shall be determined by figuring the time and intensity levels for time periods set out in tables 2 and 3.

TABLE 3. IMPULSIVE SOUND LEVELS WHICH POSE AN  
IMMEDIATE THREAT TO HEALTH AND WELFARE  
(Measured at 50 Feet)

Sound Level Limit (dB)	Number of Repetitions Per 24-Hour Period
140	1
130	10
120	100

**Sec. 42-258. Sound equipment, sound amplifying equipment and construction equipment.**

- (a) *Permit required.* No person shall, use, operate or cause to be used or operated any sound equipment or tools or equipment used in construction activities beyond the hours permitted under section 42-260 of this article upon the public right-of-way or in any building or upon any premises, public or private, creating a noise disturbance unless such person:
  - (1) First obtains a permit in accordance with this section;
  - (2) Complies with the conditions imposed by the permit, including the maximum permitted sound level shown therein;
  - (3) Complies with the provisions of chapter 102 of this Code, as it regulates street closings; and
  - (4) Complies with all other applicable subsections of this section.
- (b) "*Sound equipment*" requiring a permit shall not include:
  - (1) Equipment used for public health and safety purposes.
  - (2) Church or clock carillons, bells or chimes.
  - (3) Automobile or boat radios, tape decks or players, or other standard equipment used and intended for the use and enjoyment of the vehicle occupants, provided the sound emitting there from does not create a noise disturbance or does not violate section 42-259.
  - (4) Un-amplified live music provided, sponsored, or funded, in whole or in part, by a governmental entity.

- (c) *Permit, fees.* A separate permit shall be required for each type of activity described in subsection (e) of this section, and permits shall be nontransferable. The permit shall be conspicuously displayed on or immediately adjacent to the sound equipment. A nonrefundable fee shall be paid in the amount set in the schedule of fees adopted by the City Council by resolution at the time of application for the sound permit.
- (d) *Information required on permit application.* Application for the permit required in this section shall be made in writing to the zoning enforcement officer, accompanied by the required permit fee and the following information:
- (1) The type of permit requested.
  - (2) The name and address of the applicant.
  - (3) The purpose for which the sound equipment will be used.
  - (4) The location where the sound equipment will be used.
  - (5) Designation of the days of use and proposed hours of operation of the sound equipment.
  - (6) A general description of the sound equipment, including the license number of any motor vehicle upon which it is to be operated.
  - (7) The name(s) and phone number(s) of the person(s) responsible for the use of the permit.

If the application contains the required information and is accompanied by the required fee, and the proposed use of the sound equipment complies with the standards and other requirements of this section and all other applicable laws and ordinances, the zoning enforcement officer shall issue the appropriate permit.

- (e) *Application standards.* The following are general standards for the type of permit:
- (1) *Type "A" permit.* A type "A" permit may be issued for sound equipment emitting live music, reproduced music or human speech registering not more than 85 dBCs when measured at the real property boundary of the permitted property or at a distance of 50 feet from the sound equipment if issued in conjunction with a street closing. A type "A" permit may be issued only in areas of the city zoned for industrial, commercial and/or mixed use and only between the hours of 9:00 a.m. and 10:00 p.m., except the ~~C-3, C-3A, C-3B, C-3R~~ and ~~DRDX1, DX2 and DXR~~ zoned areas which shall be between the hours of 9:00 a.m. and 11:00 p.m. Sunday through Thursday, and between the hours of 9:00 a.m. and 12:30 a.m. on Friday and Saturday, the Sunday of Memorial Day weekend, Labor Day weekend and the Fourth of July should it fall on a Sunday. A type "A" permit will be issued for a thirty day period, commencing on the first of each month, to be used on eight days during the permitted time, with the days of use to be designated on the permit application.
  - (2) *Type "B" permit—parks located in residential zones.* A type "B" permit may be used for sound equipment emitting music or human speech registering not more than 65 dBCs when measured at the real property boundary or at a distance of 50 feet from the sound equipment, whichever distance is closer to the sound equipment. Sound equipment permitted under a type "B" permit may be used only in public parks owned and operated by the city or public grounds owned and operated by another governmental body, located in a residentially zoned district from 9:00 a.m. to the time the park closes for events authorized and approved by the park and recreation board or other body having jurisdiction over the park or

- public grounds. A type “B” permit will be issued for one day up to one week with the days to be designated on the permit application.
- (3) *Type “C” permit—church or school grounds.* A type “C” permit may be issued for sound equipment emitting music or human speech registering not more than 65 dBCs when measured at the real property boundary or when measured at a distance of 50 feet from the sound equipment, whichever distance is closer to the sound equipment. Sound equipment permitted under a type “C” permit may be used only on church grounds, school grounds, or in conjunction with a school sponsored activity, from 9:00 a.m. to 10:00 p.m. for events authorized and approved by the church or school authorities having jurisdiction of the grounds. A type “C” permit will be issued for one day up to one week with the days to be designated on the permit application.
  - (4) *Type “D” permit--residential events.* A type “D” permit may be issued for sound equipment emitting music or human speech registering not more than 65 dBCs when measured at the real property boundary of the permitted property or 50 feet from the sound equipment, whichever distance is closer. Sound equipment permitted under a type “D” permit may be used only pursuant to a permitted street closing under chapter 102 of this Code, from 9:00 a.m. to 10:00 p.m. A type “D” permit will be issued for one day up to one week with the days to be designate on the permit application.
  - (5) *Type “E” permit – background sound equipment.* A type “E” permit may be issued for a commercially zoned area or a commercially zoned legacy PUD or PBP area for sound equipment to be used in an outdoor area in conjunction with an approved business use emitting music or human speech, excluding live music, registering not more than 65 dBCs, or below the ambient level, when measured at the property boundary, edge of designated seating area or 50 feet from the sound equipment whichever is closer. Sound equipment permitted under a type “E” permit may be used only during regular hours of business operation. A type “E” permit will be issued up to one year.
  - (6) *Type “F” permit – Simon Estes Riverfront Amphitheater, Brenton Skating Plaza and other property owned by the city.* A type “F” permit may be issued for sound equipment to be used in the Simon Estes Riverfront Amphitheater or the Brenton Skating Plaza or other property owned by the city, in conjunction with a lease agreement entered into with the Parks and Recreation Department or the city if the property is not city parkland, emitting music or human speech, registering not more than 100 dBCs, when measured at the middle cement crosswalk area of the amphitheater or 50 feet from the sound equipment at the skating plaza or other property owned by the city. This permit is effective between the hours of 9:00 a.m. to 11:00 p.m. Sunday through Thursday and 9:00 a.m. to 12:30 a.m. on Friday and Saturday, the Sunday of Memorial Day weekend, Labor Day weekend and the Fourth of July should it fall on a Sunday.
  - (7) *Type “G” permit-Special Event Live Performances.* A type “G” permit may be issued for sound amplification equipment to be used for live performances where the sound from music or human speech does not exceed 100 dBCs when measured 50 feet from the amplification equipment and meets all of the following criteria:

- a. The special event or live performance is located in a ~~C-3, C-3A, C-3B, C-3R or RD~~ DX1, DX2 or DXR zoned district,
  - b. This type permit will only be issued two times per year per address to include a street closing abutting the sponsoring business and only if 30 days has elapsed from the effective date of a previous type "G" permit for the same location, however, if the street closing is sponsored by the Court Avenue Business Association, Downtown Community Alliance, Historic East Village, or any other community organization affiliated with businesses located in the DX1, DX2 or DXR ~~C-3, C-3A, C-3B, C-3R or RD~~ zoned districts this type permit is not limited in number or time span,
  - c. If the applicant has no address in the DX1, DX2 or DXR ~~C-3, C-3A, C-3B, C-3R or RD~~ zoned district, then either a business in the properly zoned district, or a community organization affiliated with businesses located in the DX1, DX2 or DXR ~~C-3, C-3A, C-3B, C-3R or RD~~ zoned districts must sponsor the event,
  - d. This type permit may not be issued if another type "G" permit has already been issued within 1,000 feet of a given location and covering the same time on any day. If the event has multiple stages in the designated event only one permit will be required.
  - e. When used in conjunction with a street closure this type permit will not be issued until the street use team approves the street closure,
  - f. This type permit must be obtained at least 7 days prior to the performance unless pending street use team approval.
  - g. This type permit is effective for up to three consecutive days and for the hours of 9:00 a.m. to 11:00 p.m. Sunday through Thursday and 9:00 a.m. to 12:30 a.m. on Friday and Saturday, the Sunday of Memorial Day weekend, Labor Day weekend and the Fourth of July should it fall on a Sunday.
  - h. A variance may be sought in accordance with this article if any of the requirements for issuance of this type permit wish to be modified on a case by case basis.
- (8) *Type "H" permit-Farmer's Market.* A type "H" permit may be issued to Farmer's Markets which have a street closure for sound amplification equipment allowing music up to 85 dBCs for the duration of the street closure.
  - (9) *Type "I" permit- Waterworks Park and Zoo.* A type "I" permit may be issued for amplification equipment for live performances held in Waterworks Park or in the Blank Park Zoo Foundation Parcel, emitting music or human speech, at a level not greater than 85 dBCs when measured at the nearest residence. A type "I" permit is effective for one or two days and for the hours of 9:00 a.m. and 10:00 p.m. Sunday through Thursday, and between the hours of 9:00 a.m. and 12:00 midnight on Friday and Saturday, the Sunday of Memorial Day weekend, Labor Day weekend and the Fourth of July should it fall on a Sunday. Additionally the stage and sound equipment for any live performances held in Waterworks Park shall be set up facing the northeast causing the sound to be directed through the park and away from residential areas. The stage and sound equipment for any live performances held on the Blank Park Zoo Foundation Parcel shall be set up facing the south causing the sound to be directed towards the Blank Park Zoo and the Blank Golf Course.

For the purpose of this subsection, Blank Park Zoo Foundation Parcel means the tract owned by Blank Park Zoo Foundation located south of Army Post Road and east of SW 9th Street, and designated for tax purposes as Polk County district/parcel number 120/00324-005-001.

- (10) *Type "J" permit – night construction.* A type "J" permit may be issued for residential construction activities beyond the hours permitted under section 42-260. A type "J" permit may be issued for construction performed on behalf of a nonprofit or philanthropic organization where such construction activity is to be completed in an expedited manner pursuant to a construction schedule which has been approved by the community development director and has been determined to advance the overall welfare of city residents, provided that the residential structure is being built for occupation by low or moderate income persons. Application for a type "J" permit shall be processed pursuant to sections 42-264 through 42-267 of this article.
  - (11) *Type "K" permit* may be issued for an event whose route is on city streets, trails and/or other public right-of-way with the permit to be valid one hour before the start of the event and at specifically approved locations along the route that would otherwise comply with all other provisions of this article.
  - (12) *Type "L" permit* may be issued to a privately held recreational area more than 40 acres in area for outside events, emitting music or human speech at a level not greater than 100 dBCs when measured 50 feet from the amplification equipment. This permit is effective between the hours of 9:00 a.m. to 11:00 p.m. Sunday through Thursday and 9:00 a.m. to 12:30 a.m. on Friday and Saturday, the Sunday of Memorial Day weekend, the Sunday of Labor Day weekend, and the Fourth of July whenever it occurs on a Sunday. The stage and sound equipment for any live performances held shall be set up facing away from residential areas. A type "L" permit will be issued for a thirty-day period, commencing on the first of each month, to be used on eight days during the permitted time, with the days of use to be designated on the permit application.
- (f) *Commercial advertising.* No sound equipment shall be permitted to be used on public streets or public places or in any building or upon any premises if the sound may be plainly audible from any public street or public place within the city when any such use is for commercial advertising purposes or for the purpose of attracting the attention of the public to any building or structure for monetary gain.
- (g) *Denial or revocation.*
- (1) *Denial of sound permit.* The director of the community development department or director's designee may deny an application for a sound permit in writing. The following criteria and standards shall be considered as basis for a denial:
    - a. Whether police have stopped activities sponsored by the same applicant or in the same location for public safety purposes such as riot, disorderly conduct, or other crimes;
    - b. Whether the sponsor, applicant, or their employees have violated the Des Moines Municipal Code at past events requiring a sound permit;
    - c. Whether the applicant(s) have paid the city all fees due and owing under any chapter of the Des Moines Municipal Code; and



- d. If any person responsible for monitoring the terms and conditions of the sound permit at the premises has been found to be in violation of this article in any 12 month period.
  - e. Where it is determined that the permit would be in conflict with another established event, or when in conjunction with another permit, when considering the combined impact the issuance would create a potential for a noise disturbance.
- (2) *Revocation.* The director of the community development department or the director's designee may revoke a sound permit issued pursuant to this article upon the second finding of a violation of the terms and conditions of the permit by persons charged with enforcement of this article, within a twelve month period.
  - (3) *Revocation hearing-adverse impact.* If the director of the community development department receives written statements or a petition from 25 percent or more of the occupants of single family or duplex residences and the owner or manager of multiple residence structures including hotels, who claim to be adversely affected by the operation of sound amplification equipment under a valid sound permit and who live within 200 feet measured from property line to property line of the property where such sound permit is valid, the community development director, or the director's designee, shall proceed pursuant to Section 42-266.

**Sec. 42-553. Scope.**

- (a) Any person seeking city approval of any of the following development activities is subject to the requirements of this article. No city permits or approvals shall be given for any of the following development activities until the applicant has received approval of a tree removal and mitigation plan as provided in this article for the affected property.
  - (1) a grading permit pursuant to article II, of chapter 42;
  - (2) a site plan pursuant to article ~~V~~9, of chapter ~~§2135~~; or,
  - (3) a subdivision plat or plat of survey pursuant to chapter 106 of this Code.
- (b) Any person may voluntarily seek approval of a tree removal and mitigation plan pursuant to this article.
- (c) This article does not apply to public improvement projects or to activities on city property or within the public rights-of-way. Public improvement projects, and activities on city property or within the public rights-of-way shall be subject to city policies for the preservation and planting of trees on city property, and are to consider tree preservation and replacement in the design and implementation of public works projects.

**Sec. 42-555. Tree protection and mitigation standards.**

- (a) *Protection of existing trees.* Any mature tree or canopied area identified for preservation in an approved tree removal and mitigation plan shall be protected during any development activity in accordance with policies approved by the director. Preference shall be given to preserving mature trees of a species recommended for use at such trees' locations in the list of recommended tree species approved by the city council by resolution.
- (b) *Mitigation option A.* If the applicant has chosen to provide the information required under Option A in section 42-554, the tree removal and mitigation plan shall provide mitigation

for the removal of canopied area by providing one replacement tree for each 2,000 square feet of canopied area removed or to be removed after May 1, 2009.

Tree removal shall be allowed without mitigation under this option A when the applicant has demonstrated that such tree removal is required to conform with any applicable law or governmental regulation or infrastructure requirements including, but not limited to, streets, sidewalks, and stormwater detention, and there is no economically feasible alternative that would materially reduce the required amount of tree removal.

- (c) *Mitigation option B.* If the applicant has chosen to provide the information required under Option B in section 42-554, the tree removal and mitigation plan shall provide mitigation for the loss of canopied area existing on or after May 1, 2009, that has already been removed, and for any existing mature trees to be removed, in accordance with the following ratios:

- (1) One replacement tree shall be provided for each 2,000 square feet of canopied area existing on or after May 1, 2009, that has already been removed; and,
- (2) Replacement trees shall be provided for each mature tree to be removed based upon the diameter at breast height (DBH) of the removed tree in the following ratios:

DBH of removed tree in inches	Ration of replacement trees to removed tree
At least 12 and less than 18	1 : 1
At least 18 and less than 24	2 : 1
For each increment of 6 inches of DBH above 24 inches, one additional replacement tree shall be provided.	

Tree removal shall be allowed without mitigation under this option B when the applicant has demonstrated that such tree removal qualifies under any of the following criteria:

- (i) Trees that are dead or dying from causes beyond the owner's control.
  - (ii) Trees of a species that is not permitted for use as a street tree;
  - (iii) Trees that must be removed to conform with any applicable law or governmental regulation or infrastructure requirements including, but not limited to, streets, sidewalks, and stormwater detention, when there is no economically feasible alternative that would materially reduce the required amount of tree removal.
- (d) *Mitigation for improper tree removal.* If the tree removal is performed in violation of an approved tree removal and mitigation plan, or if tree removal is performed without an approved tree removal and mitigation plan under circumstances which reasonably demonstrates that such tree removal was performed in anticipation of redevelopment for the purposes of avoiding the mitigation requirements under this article, then one replacement tree shall be planted for every 700 square foot increment of canopied area removed as determined by examination of the baseline aerial photography.
- (e) *Replacement trees.* Replacement trees shall be of a species on the list of recommended tree species approved by the city council by resolution, and approved by the director for use at the proposed location. Native species are preferred for replacement trees. Replacement trees shall be of an overstory species and at least one and one-half (1 ½) inches in caliper and not more than 2 inches in caliper measured six inches above grade. However, understory, ornamental and coniferous trees may be substituted for up to 30% of

the required overstory replacement trees, subject to the following replacement ratios: Two evergreen trees at least 6 feet tall, or three understory or ornamental trees at least 1 inch in caliper measured six inches above grade may be substituted for a required overstory replacement tree.

- (f) *Credit for required trees.* Trees required to be planted by the landscape standards in the ~~adopted site plan policies~~ chapter 135 of this code, including those planted as required street trees, may be counted towards satisfaction of the mitigation requirements set forth above.
- (g) *Off-site mitigation.* Any replacement tree which cannot be reasonably planted within the boundaries of the development shall be planted off-site as approved by the director at the following locations, with preference to be given to locations in close proximity to the property where the tree removal is proposed or has occurred:
  - (1) On city property at locations approved by the city;
  - (2) On other public property in the city with the written consent of an appropriate officer of the entity with jurisdiction over the property; or,
  - (3) On private property in the city with the consent of the property owner.
- (h) *Timing.* All replacement trees shall be planted within one year of commencement of tree removal or by such later date as may be approved by the director for good cause shown. In the approval of any subdivision, site plan, or conceptual or development plan for the development of the affected parcel, the schedule for the planting of any replacement trees may be extended to coordinate with such development. Each owner of the property upon which tree removal has occurred shall be responsible for causing the replacement trees to be planted and maintained in accordance with this article and the approved tree removal plan.
- (i) *Maintenance of replacement trees.* All replacement trees shall be maintained by the owner of the property where such tree is planted for a period of one (1) year after planting, during which time the replacement tree shall not be subject to tree removal without the prior written consent of the director. If any replacement tree is removed or dies within such period, regardless of the cause, such owner shall cause a new replacement tree to be planted in close proximity to the site of the original tree.

## Chapter 50 FLOODPLAINS\*

### Sec. 50-35. Certificate of compliance.

- (a) *Required.* An application for a certificate of compliance shall be filed with the city permit and development center and a certificate of compliance must be issued pursuant to subsection (c) of this section prior to commencement of any proposed development or encroachment within a floodplain area. No application for any of the following shall be approved respecting proposed development within a floodplain area unless a certificate of compliance has been issued pursuant to subsection (c) of this section:
  - (1) Site plan or alternate design documentation approval, pursuant to ~~section 82-207~~ article 9 of chapter 135 of this Code.
  - (2) Grading permit approval, pursuant to section 42-86 of this Code.
  - (3) Building permit approval, pursuant to chapter 26 of this Code.
  - (4) Subdivision approval, pursuant to chapter 106 of this Code.

- (5) ~~Occupancy permit approval, pursuant to division 5 of article II of~~ Issuance of certificate of zoning compliance, pursuant to section 134-1.7 of chapter 134 of this Code.
  - (6) Development plan approval, pursuant to division 11 (R-5), division 12 (R-6), division 13 (PUD), division 14 (PBP) and division 23 (C-4) of article III of chapter 134 this Code if approved prior to December 15, 2019, and pursuant to legacy PUD approval in chapters 134 and 135 of this Code if approved on or after December 15, 2019.
- (b) *Required information.* Every application for a certificate of compliance shall contain the following information:
- (1) A description of the work for which application is to be made.
  - (2) A description of the land on which the proposed work is to be done (i.e., lot, block, tract, street address or similar description) that will readily identify and locate the work to be done.
  - (3) Indication of the use or occupancy for which the proposed work is intended.
  - (4) A report showing the elevation, in relation to National Geodetic Vertical Datum, of the lowest floor, including basement, of a building and of the level to which a building is to be floodproofed. In addition, such report shall include such information regarding the elevation of the 100-year flood and flood velocities during the 100-year flood as the city engineer deems reasonably necessary for the purpose of this article. Such report shall be prepared by a professional engineer registered under state laws, which report shall be approved by the city engineer as to method and form.
  - (5) For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.
  - (6) Such other information as the city engineer deems reasonably necessary for the purpose of this article.
- (c) *Determination and action.* The city engineer shall review each floodplain development application and shall, within a reasonable time, make a determination as to whether the proposed development meets the applicable performance standards of section 50-34 of this article and, on the basis of such determination, shall issue or deny the certificate of compliance. For a denial, the applicant shall be informed, in writing, of the specific reasons therefore and shall have the right to appeal to the city council for a variance of the requirements of this article on the grounds that (i) the city engineer made an erroneous determination or (ii) an exception or modification should be made to the full application of the performance standards of section 50-34 of this article in order to avoid unnecessary hardship to the applicant or to further the public interest. The city council shall authorize such a variance only as follows:
- (1) Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local codes or ordinances.
  - (2) Variances shall not be issued within any designated floodway if any increase in flood levels during the 100-year flood would result. Consideration of the effects of

any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.

- (3) Variances shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this article, the applicant shall be notified in writing over the signature of the City Engineer that: (i) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction increases risks to life and property. This statement shall be maintained as a required record under section 50-35(e) below.
- (5) All variances granted shall have the concurrence or approval of the Department of Natural Resources.
- (6) In addition to the above conditions in this subsection, variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

All actions by the city council in granting or denying appeals shall be by written decision setting forth the specific reasons therefore. The city council may attach such conditions to the granting of an exception or modification as it deems necessary to further the purposes of this article. If an appeal is granted by the city council, the city engineer shall thereafter issue a certificate of compliance.

- (d) *Construction and use as provided in application and plans.* Certificates of compliance issued on the basis of approved plans and applications authorize only the use, arrangement and construction set forth in such approved plans and applications and no other use, arrangement or construction. Any use, arrangement or construction at variance with that authorized shall be deemed a violation of this article and shall be punishable as provided in section 50-36 of this article. The applicant shall be required to submit certification by a professional engineer or land surveyor, as appropriate, registered in the state, that the finished fill, building floor elevations, floodproofing, or other flood protection measures were accomplished in compliance with this article prior to the use or occupancy of any structure.
- (e) *Required records.* The city engineer shall compile and maintain records of actions taken on all requests for a certificate of compliance, including justification for issuance or denial. The city permit and development center shall compile and maintain records of the elevation, in relation to National Geodetic Vertical Datum, of the lowest floor, including basement, of all new and substantially improved buildings within floodplain areas.

## **Chapter 58 HISTORICAL PRESERVATION\***

### **Sec. 78-10. Limitation on retail premises.**

No person shall engage in the business of displaying for sale, or selling, food, beverages or merchandise within the city from any vehicle, trailer, tent, or temporary structure or from any temporary location or place, except:

- (1) *Permitted premises.* Activities conducted in compliance with a certificate of ~~occupancy zoning compliance~~ issued pursuant to section 134-151.7, entirely within a building in compliance with Chapter 134 or in conformance with a site plan approved pursuant to Article V of ~~chapter 829~~ of Chapter 135.
- (2) *Yard sales.* The casual and occasional sales of used household goods by the owner thereof to the public, on a nonreceiving basis, if the seller, at the time of the sale, is not engaged for profit in the business of selling goods of that or a similar nature, so long as such sales are not conducted in excess of four consecutive days and no more than two times annually.
- (3) *Licensed use of right-of-way.* Sales activities conducted in compliance with an entertainment district license, a sidewalk sales permit, a farmers' or public market permit, or a sidewalk cafe license or lease issued for the premises pursuant to article VII of chapter 102 of this code.
- (4) *Street Use Permit.* Sales activities conducted in compliance with a street use permit issued pursuant to article XVI of chapter 102 of this code.
- (5) *Special Permits Conditional Use.* Sales activities conducted pursuant to a special ~~permit issued conditional use approval~~ by the zoning board of adjustment pursuant to ~~division 3~~ of article IV-6 of chapter 134 of this code.
- (6) *Peddlers.* Sales activities conducted in compliance with a peddlers license issued pursuant to article II of this chapter.
- (7) *Transient merchants.* Sales activities by a transient merchant which are conducted in compliance with a transient merchant license issued pursuant to article III of this chapter, or which are exempt from the requirement to obtain a transient merchant license under section 78-62.
- (8) *Parks.* The sale of food and beverages in public parks and rivers with permission of the park and recreation board.
- (9) *Emergency response sites.* Sales of food and beverages at the site of an emergency or disaster with the permission of the police chief, fire chief or public works director.
- (10) *Mobile vendors.* Sales activities by a mobile vender which are conducted in compliance with a mobile vender license issued pursuant to article V of this chapter.

#### **Sec. 78-61. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Food service establishment* shall have that meaning established by section 481-30.2 of the Iowa Administrative Code.

*Pushcart* means a non-motorized cart which is self-propelled by the operator.

*Transient merchant* means a person, principal or agent who engages in a merchandising business from a temporary location or structure in the city, and who, for the purpose of carrying on such business, hires, leases or occupies any land, structure, trailer or truck for the exhibition and sale of such goods, wares or merchandise and including the sale of any article, food, beverage, fruit, vegetable or farm product; provided however that the following types of sales activities shall not constitute sales by a transient merchant:

- (1) *Yard sales.* The casual and occasional sales of used household goods by the owner thereof to the public; on a nonreceiving basis, if the seller, at the time of the sale, is not engaged for profit in the business of selling goods of that or a similar nature, so long as such sales are not conducted in excess of four consecutive days and no more than two times annually.
- (2) *Licensed use of right-of-way.* Sales activities conducted in compliance with an entertainment district license, a sidewalk sales permit, a farmers' or public market permit, or a sidewalk cafe license or lease issued for the premises pursuant to article VII of chapter 102 of this code.
- (3) *Street Use Permit.* Sales activities conducted in compliance with a street use permit issued pursuant to article XVI of chapter 102 of this code.
- (4) *Special Permits Conditional Use.* Sales activities conducted pursuant to a special permit issued conditional use approval by the zoning board of adjustment pursuant to ~~division 3 of article IV~~ article 6 of chapter 134 of this code.
- (5) *Peddlers.* Sales activities conducted in compliance with a peddler's license issued pursuant to article II of this chapter.
- (6) *Parks.* The sale of food and beverages in city parks with permission of the department director.
- (7) *Emergency response sites.* Sales of food and beverages at the site of an emergency or disaster with the permission of the police chief, fire chief or public works director.
- (8) *Mobile vendors.* Sales activities by a mobile vender which are conducted in compliance with a mobile vender license issued pursuant to article V of this chapter.
- (9) *Transient merchant premises permit* means a permit issued to the owner of real estate to allow a transient merchant or a mobile food vender to operate on the owner's real estate subject to the provisions of articles III and IV of chapter 78.

**Sec. 78-67. Application for a transient merchant premises permit.**

At least three business days prior to allowing a transient merchant or mobile food vender, currently licensed by the city, to operate on premises within the city, an owner or lessee of the premises must obtain a transient merchant premises permit from the city clerk. The application for the permit must be on a form provided by the city clerk and must demonstrate to the satisfaction of the city clerk and the zoning administrator that the premises meet the following requirements:

- (1) All applicable requirements of this article, the City Code, the Iowa Code and the Iowa Administrative Code.
- (2) The premises is within a commercial or industrial zoning district.
- (3) The premises is not on a parcel having a residential use as its principle use.
- (4) Trailers, vehicles, tents, equipment, and areas used for the storage, display or sale of food or merchandise will be located only on a paved surface outside required zoning-setback for structures under chapters 134 and 135 and outside any required fire lanes and drive approaches.
- (5) The premises has at least three paved off-street parking spaces dedicated to the transient merchant or mobile vender operations and is served by a paved driveway from a public right-of-way. Property located in ~~C-3, C-3A, C-3B, C-3R~~ and ~~D-RDX1, DX2 and DXR~~ zoning districts are exempt from the off-street parking

requirement. For purposes of this subsection, a transient merchant or mobile vender may share parking with an existing business on the site only if available parking is sufficient to serve the normal operations of both. If the operation of a transient merchant or mobile vender at the site has caused an overflow of customer or employee parking into the street or other private parking lots in the vicinity within the past year, shared parking is presumed to be insufficient.

- (6) The premises must have a dumpster enclosure unless the premises is legally in use by a licensed transient merchant on the effective date of this amendment, in which case a dumpster enclosure must be provided within one year after the issuance of a premises permit. The requirement for a dumpster enclosure may be waived if permit holder can establish to the satisfaction of the neighborhood inspection zoning administrator that it has a non-residential alternative location for taking its garbage.
- (7) Only one transient merchant or mobile vender currently licensed by the city is allowed to operate on the parcel at any time.
- (8) The permit holder must provide a paved area for display and sale by the transient merchant. This provision does not apply to premises that are covered by a valid transient merchant license on the effective date of this ordinance if a premises permit is applied for on or before the expiration of the existing transient merchant license. This exemption terminates when a premises permit is not timely renewed or is denied for any reason. The owner of the premises must comply with all zoning requirements relating to the premises.
- (9) If the transient merchant or mobile vender is selling or serving food, the premises must also:
  - a. Assure that the transient merchant or mobile vender complies with the requirements established by Iowa Administrative Code §481-31 for a food establishment other than a food processing plant.
  - b. Provide bathroom facilities for the business workers and customers on the licensed premises or by agreement for the use of bathroom facilities located within a reasonable distance from the licensed facilities that are open the same hours as the transient merchant or mobile vender.
  - c. The premises must not be located within 100 feet of any public entrance into the waiting of service area of any street level restaurant operating on the date of the application. This provision does not apply to premises permits issued to locations at which any transient merchant is legally operating within a 100 feet of an existing restaurant on the effective date of this ordinance; however, this provision applies if a permit lapses for any period of time or if a restaurant subsequently begins operations within 100 feet of the premises, then this provision applies to all future applications.

**Sec. 78-74. Restrictions on operations of transient merchants and transient merchant premises.**

- (a) Transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shall not sell to any person located on any public street, alley, driveway access, or public way.



- (b) Only one sign is allowed on premises that are subject to a transient merchant premises permit. Such sign shall be located outside the required front yard setback area designated by chapter ~~134~~135 of this Code. Such sign shall have a single face or two parallel faces, with each face not to exceed 24 square feet in area. Such sign shall be securely anchored so as to prevent its displacement by weather. Vehicle signs painted or attached directly to the body of the vehicle shall not be subject to this limitation.
- (c) Transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shall not use any display that exceeds the height of 15 feet.
- (d) Transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shall display wares or products using anchoring or affixing such wares or products in such a manner so as to prevent their displacement by weather conditions.
- (e) Transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shall not conduct business within the setback area designated by chapter ~~134~~135 of this Code. Transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit are only allowed to sell, display or store merchandise or equipment within the boundaries of the area designated for the operation of such business in a permit issued pursuant to this article.
- (f) Transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit must display the license required by this article and a valid sales tax permit in a manner that it is readily visible to the public during operation.
- (g) Transient merchants shall operate the business in a manner that does not violate any applicable food and sanitation laws.
- (h) Transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shall remove all equipment, temporary structures, garbage, and any vehicle or trailer used in the operation of the business from the licensed premises and the underlying parcel at any time not open for business and during hours business is prohibited. This section does not apply to temporary closures of the business of up to 30 minutes two times during allowed hours of operations. This requirement does not apply to the sale of raw fruits and vegetables, natural Christmas trees, live plants and nursery stock.
- (i) Private property owner shall not allow, permit or authorize any person to conduct a transient sale or allow a mobile food vendor to operate on the premises without a premises permit required by this article.
- (j) Private property owners or lessees shall not allow, permit, or authorize the use of any property within the control of the private property owner or lessee in violation of any of the sections of this article.
- (k) Transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shall not operate the business in a manner that violates the Noise Control Ordinance of the City of Des Moines set forth in article IV of Chapter 42 of this Code.
- (l) Only one transient merchant or mobile vendor may operate on premises with permit at any time.
- (m) Hours of operation. Transient merchants are permitted to operate between 5:30 a.m. and 1:30 a.m. the following day unless the premises is located within 125 feet of any residentially-zoned property. Within 125 feet of a residential property, transient merchants are allowed to operate between 8:00 a.m. and 10:30 p.m. on the same day. For any transient

merchant licensed to operate on the effective date of this amendment, the transient merchant is allowed to operate between 5:30 a.m. and 1:30 a.m. the following day as long as the transient merchant is operating with a license on the same premises it operated on the effective date of this amendment and its ownership does not change. If a license lapses for any period of time, the licensee is not permitted to operate outside of 8:00 a.m. to 10:30 p.m. the same day within 125 feet of a residential property. For purposes of this section, ~~C-3, C-3A, C-3B, C-3R and D-RDX1, DX2 and DXR~~, are not considered residentially zoned property.

- (n) The display and sale area cannot exceed 1,000 square feet, with no side exceeding 50 feet in length.

## **Chapter 82 PLANNING\***

### **Sec. 82-1. Plan and zoning commission fees.**

The required fee for a change in district classification or boundaries or text amendment under ~~section 134-4~~ chapter 134 of this Code shall be in the amount set in the Schedule of Fees adopted by the city council by resolution. In addition to the fees, the owner shall pay the notification costs for property owners, publication costs and recording costs as established by the community development department.

### **Sec. 82-3. Community development department fees.**

The required fees for a certificate of occupancy and compliance under ~~division 5 of article II of~~ chapter 134 of this Code shall be in the amounts set in the Schedule of Fees adopted by the city council by resolution.

### **Sec. 82-41. Quarterly reports.**

The plan and zoning commission should provide, as elements of its quarterly reports, site plans, subdivisions, legacy planned unit developments and work program status together with a perspective on long-range planning issues.

### **Sec. 82-77. Hearings.**

Before adopting the comprehensive plan or any part of it or any substantial amendment thereof, the plan and zoning commission shall hold at least one public hearing thereon, ~~notice of the time of which shall be given by one publication in a newspaper of general circulation in the city, not less than four days nor more than 20 days before the date of the hearing.~~ The adoption of the plan or part or amendment thereof shall be by motion of the commission carried by the affirmative vote of not less than two-thirds of the members of the commission. After adoption of such plan or amendment by the commission, a copy of the plan or amendment, together with the report and recommendation of the commission, shall be forwarded to the city council, and the council may approve the plan or amendment, following public hearing and publication as required by state law. When such plan or any modification or amendment thereof shall receive the approval

of the council, the plan until subsequently modified or amended shall constitute the official city plan.

## ARTICLE V. SITE PLAN REVIEW ~~Repealed by Ord. No. 15,---~~

### ~~Sec. 82-206. Purpose.~~

- (a) ~~It is the intent and purpose of this article to establish a procedure which will enable the city to plan for and review certain proposed improvements of property within specified zoning districts of the city in order to:~~
- ~~(1) — Implement community policies on physical development;~~
  - ~~(2) — Provide for efficient, rational allocation of scarce facilities and resources;~~
  - ~~(3) — Promote economy and efficiency in the provision and improvement of municipal services through the regulation of development; and~~
  - ~~(4) — Ensure the orderliness, quality and character of the development of property in the city, prevent foreclosure of future development opportunities, and facilitate coordination of land usage with planned and available facilities and resources.~~
  - ~~(5) — Give due consideration to the preservation of canopied areas and mature trees and to provide for the mitigation of canopied areas and mature trees which are removed for development.~~
- (b) ~~The site planning review requirements of this article are designed to ensure the orderly and harmonious development of such property in a manner that shall:~~
- ~~(1) — Promote the most beneficial relation between present and proposed future uses of land and the present and proposed future circulation of traffic throughout the city;~~
  - ~~(2) — Permit present development of property commensurate with fair and orderly planning for future development of other properties in the various areas of the city with respect to the availability and capacity, present and foreseeable, of public facilities and services. The factors to be considered in arriving at a conclusion concerning proposed present development of property shall include the following:~~
    - ~~a. — The maximum population density for the proposed development, the proposed density of use, and consideration of the effect the proposal will have on the capacity of existing water and sanitary sewer lines to the end that existing systems will not become overloaded or capacity so substantially decreased that site use will inhibit or preclude planned future development;~~
    - ~~b. — Zoning restrictions at the time of the proposal;~~
    - ~~c. — The city's comprehensive plan;~~
    - ~~d. — The city's plans for future construction and provision for public facilities and services; and~~
    - ~~e. — The facilities and services already available to the area which will be affected by the proposed site use;~~
  - ~~(3) — Encourage adequate provision for surface and subsurface drainage, in order to ensure that future development and other properties in various areas of the city will not be adversely affected;~~
  - ~~(4) — Provide suitable screening of parking, truck loading, refuse disposal, and outdoor storage areas from adjacent residential districts; and~~

- ~~(5) — Preserve the character of the commercial corridor within NPC neighborhood pedestrian commercial districts.~~
- ~~(6) — Encourage the preservation of canopied areas and mature trees and require mitigation for the removal of trees.~~

**Sec. 82-207. Application.**

~~(a) — *Preapplication conference.* Whenever any person proposes to develop any tract or parcel of land, he or she shall submit to the community development department a request for a preapplication conference for any use except the following:~~

- ~~(1) — One or two family attached and detached dwellings not within an NPC neighborhood pedestrian commercial district.~~
- ~~(2) — Except for delayed deposit services and pawnbrokers as defined in section 134-3, nonresidential building or paving projects provided: i) the property is not within an NPC neighborhood pedestrian commercial district, D-R downtown riverfront district; or C-3B central business mixed use district; ii) the project does not involve the extension of parking under the authority of section 134-1377(f)(8) into a zoning district where such parking would be otherwise prohibited; and, iii) the project has a total site area of 10,000 square feet or less.~~
- ~~(3) — Fire stations owned and operated by the city.~~
- ~~(4) — Publicly owned parks, playgrounds, golf courses, recreation areas.~~
- ~~(5) — Agriculture uses, including nurseries and truck gardens, provided that no retail sale shall be permitted on the premises.~~
- ~~(6) — Uses of land or structures not within an NPC neighborhood pedestrian commercial district customarily incidental to and subordinate to those uses set forth in subsections (a)(1) through (5) of this section.~~
- ~~(7) — Except for delayed deposit services and pawnbrokers as defined in section 134-3, development within the NPC neighborhood pedestrian commercial district, D-R downtown riverfront district or C3-B central business mixed use district with a total site area of 2,500 square feet or less and which is determined by the planning director to not increase the nonconformance of such development with the applicable design guidelines in this article.~~

~~The conference shall include the applicant or his or her representative, community development department staff and other city staff. The purpose of the conference shall be to acquaint the city staff with the proposed development and to acquaint the applicant or his or her representative with the procedures and with any special problems that might relate to the development. The applicant shall furnish a legal description of the property to be developed at the time of requesting a preapplication conference, and the conference shall be held within 15 days of such request.~~

~~(b) — *Construction of terms.*~~

- ~~(1) — For the purposes of this article, development is defined to be the placement of buildings and other structures, paved areas, drainage and utility improvements, lighting and other appurtenances related to any uses except one and two family dwellings in the districts listed in subsection (a) of this section.~~

- (2) Parking accessory to and for use by a use in the NPC district which is located in an adjoining residential district shall be considered to be located in the NPC district for the purposes of this article.
- (3) In this article, guidelines are intended to be applied collectively. The officer or body charged with determining whether a set of guidelines have been satisfied shall make that determination based upon the level of compliance with the set of guidelines as a whole, and any deficiency in satisfying one or more individual guidelines may be offset by an elevated level of compliance with the guidelines overall, if it is consistent with the purpose of the guidelines and this article.
- (4) In this article, regulations are intended to be applied individually. The officer or body charged with determining whether a set of regulations have been satisfied shall make that determination upon satisfaction of each and every applicable regulation. Compliance with any individual regulation is intended to be determined independently of the determination of compliance with any other applicable regulation. A set of regulations may include a requirement for compliance with a subset of guidelines.
- (e) ~~Site plan review. A site plan shall be submitted and reviewed in accordance with the following:~~
  - (1) After completion of the preapplication conference as required by subsection (a) of this section, and if the applicant wishes to proceed with the development of the property as discussed at such conference, he or she shall cause to be prepared a site plan of such development and submit four copies of the site plan to the community development department. The site plan shall contain all the information required by section 82-212 of this article unless otherwise waived by the planning director. The site plan shall be accompanied by a covering letter requesting review and approval of such plan and by payment of the fee in the amount set in the schedule of fees adopted by the city council by resolution. In addition to the fees, the owner shall pay the costs for any required notification to property owners as established by the community development department.
  - (2) The community development department shall promptly convey one copy to the engineering department, and one copy to the fire department for their review and comments. The remaining copy shall be retained by the community development department for review. Such departments shall review the plan for conformance of the design to the regulations set forth in section 82-213 and any applicable design guidelines set forth in this article and shall forward their recommendations concerning the plan to the community development department within ten days after the date of submission of such plan to the community development department.
  - (3) A site plan submitted pursuant to this article may be combined with the plans required under the regulations applicable to development in the R-5 mobile home residential district, R-6 planned residential development district, RUD planned unit development district, PBP planned business park district, and C-4 shopping center commercial district. In the event such plans are combined, the submitted plan shall satisfy the requirements under this article and the applicable zoning district regulations.

- ~~(4) — Persons developing property wholly owned by the federal government may submit a site plan for approval without paying the fees described in this section.~~

**Sec. 82-208. Determination for property subject to administrative approval.**

- ~~(a) — *Generally.* Application for site plan approval shall be considered and determined in accordance with the procedures in this section, except for the following types of improvements which shall instead be subject to section 82-209:~~
- ~~(1) — Improvements to property in the NPC neighborhood pedestrian commercial district.~~
  - ~~(2) — Improvements which include an extension of parking into an adjoining residential district under the authority of section 134-1377(f)(8).~~
  - ~~(3) — Improvements to property used as a vehicle display lot.~~
  - ~~(4) — Improvements to property used for multiple family, boardinghouse or roominghouse use.~~
  - ~~(5) — Improvements to property in the D-R downtown riverfront district or C-3B central business mixed use district.~~
  - ~~(6) — Improvements to property used as a gas station, with or without a convenience store.~~
- ~~(b) — *Action.* The following actions shall be taken on the application:~~
- ~~(1) — Within 15 days after receiving the application for site plan review, the planning director shall take action to either approve, approve subject to conditions, or disapprove the site plan. The planning director shall promptly notify the applicant in writing of the action taken. Failure by the planning director to act within the time specified in this subsection shall be deemed to be a grant of approval of the site plan as submitted, provided that the plan as submitted does not conflict with any existing ordinance, statute, rule or law affecting the subject property, and provided, further, that if additional information is required by the director pursuant to subsection 82-212(17) of this article, the time period specified in this subsection shall not commence until such information has been filed with the community development department.~~
  - ~~(2) — If the site plan is approved subject to specific conditions, the applicant shall be required to revise the plan in accordance with those conditions and resubmit the plan for review. The planning director shall act on all resubmitted plans within five business days of their receipt.~~
  - ~~(3) — If the site plan is approved, the applicant shall submit a copy thereof on a reproducible medium to the planning director, and the director shall cause his or her written verification of approval to be affixed on such copy along with the date of approval.~~
  - ~~(4) — The planning department shall retain the duly certified copy in the department's permanent files and shall transmit without charge four copies of the plan to the applicant, provided that additional copies shall be provided upon request at cost. The applicant shall be responsible for the securing and submittal of duly certified copies of the approved site plan as required to secure building and other permits in accordance with this Code or state law.~~
- ~~(c) — *Appeals to commission.* Appeals of decisions of the planning director shall be in accordance with the following:~~

all resubmitted plans within five business days of their receipt.  
planning director for conformance with such conditions. The planning director shall act on  
revise the plan in accordance with those conditions and resubmit the plan for review by the

(d) If the site plan is approved subject to specific conditions, the applicant shall be required to  
community development department.

period specified shall not commence until such information has been filed with the  
required by the planning director pursuant to subsection 82-212(17) of this article, the time  
affecting the subject property and provided, further, that if additional information is  
plan as submitted does not conflict with any existing ordinance, statute, rule or law  
shall be deemed to be a grant of approval of the site plan as submitted, provided that the  
Failure by the commission to act within the time specified in subsection (b) of this section  
completed site plan application.

(e) The plan and zoning commission shall review and approve, approve subject to  
modifications, or reject the proposed site plan within 45 days of the date of receipt of the  
store:

(b) Improvements to property used as a gas station, with or without a convenience

(6) business mixed use district.

(5) Improvements to property in the D-R downtown riverfront district or C-3B central

roominghouse use:

(4) Improvements to property used for multiple family, boardinghouse or

(3) Improvements to property used as a vehicle display lot.

(2) Improvements to property used as a vehicle display lot.

(1) Improvements to property in the NP-C neighborhood pedestrian commercial district

district under the authority of section 134-1377(f)(8);

Improvements which include an extension of parking into an adjoining residential

the procedures in this section for the following types of improvements:

(a) Applications for site plan approval shall be considered and determined in accordance with

**Sec. 82-209. Determination for property not subject to administrative approval.**

shall be presented a reasonable opportunity to present his or her views.

action from which appeal is sought. At the commission meeting, the appealing party

at least eight commission members shall be necessary to overturn or modify the

the site plan as appealed. Except as provided in this article, the affirmative vote of

period shall have the effect of overturning the director's disapproval and approving

community development department. Failure to decide the appeal within such

exceed 60 days after the written notification of the appeal has been received by the

department, provided that the appellant may agree to a longer time period not to

written notification of the appeal has been received by the community development

(2) The plan and zoning commission shall decide all appeals within 30 days after

the date of the action from which appeal is sought.

appeal received by the community development department within 90 days after

of this article. Appeal shall be made without cost by written notification of the

or in part any determination or action of the planning director made within the scope

(1) The applicant may, upon notice to the plan and zoning commission, appeal in whole

- ~~(e) If the site plan is approved, the applicant shall submit a copy thereof on a reproducible medium to the planning director, and the director shall cause his or her written verification of approval to be affixed on such copy along with the date of approval.~~
- ~~(f) The planning department shall retain the duly certified copy in the department's permanent files and shall transmit without charge four copies of plan to the applicant, provided that additional copies shall be provided upon request at cost. The applicant shall be responsible for the securing and submittal of duly certified copies of the approved site plan as required to secure building and other permits in accordance with this Code or state law.~~

**Sec. 82-210. Appeal to city council.**

- ~~(a) The applicant may, upon written notice to the city council, appeal in whole or in part any determination made by the plan and zoning commission made within the scope of this article. Appeal shall be made without cost by filing written notification with the city clerk within 30 days after the commission ruling.~~
- ~~(b) The city council shall decide all appeals within 30 days after written notification of the appeal has been received by the city clerk. A majority vote of the city council shall be necessary to overturn the action of the plan and zoning commission.~~

**Sec. 82-211. Resubmissions and amendments.**

- ~~(a) Resubmission of a site plan due to amendments required or made to the plan as previously submitted may be made twice without additional fee. Thereafter, the resubmitted site plan shall not be considered until the applicant has deposited with the city treasurer a resubmission fee in the amount provided by section 82-3 of this chapter.~~
- ~~(b) An amendment to a previously approved site plan shall not be considered by the planning director until the applicant has deposited with the city treasurer an amendment fee in the amount provided by section 82-3 of this chapter.~~

**Sec. 82-212. Required information.**

~~Site plans which are submitted for review shall be drawn to a scale of one inch to 50 feet or larger and shall include as a minimum the following items of information, unless otherwise waived by the planning director:~~

- ~~(1) Date of preparation, north point, and scale.~~
- ~~(2) Legal description and address of the property to be developed.~~
- ~~(3) Names and addresses of the record property owner, the applicant, and the person preparing the site plan.~~
- ~~(4) Existing and proposed zoning.~~
- ~~(5) Existing and proposed contours at an interval not to exceed two feet, provided that at least two contours shall be shown.~~
- ~~(6) Existing and proposed utility lines and easements.~~
- ~~(7) Certification by a licensed land surveyor that the dimensions and bearings of the property lines are accurately delineated.~~
- ~~(8) Total number and types of dwelling units proposed, proposed uses for all buildings, total floor area of each building, estimated number of employees for each proposed~~



~~use where applicable, and any other information which may be necessary to determine the number of off street parking and loading spaces required by chapter 134 of this Code.~~

- ~~(9) Location, shape, exterior dimensions, and number of stories of each existing building to be retained and of each proposed building.~~
- ~~(10) All required yard setbacks.~~
- ~~(11) Location, grade, and dimensions of all existing and proposed paved surfaces and of all abutting streets.~~
- ~~(12) Complete traffic circulation and parking plan, showing the location and dimensions of all existing and proposed parking stalls, loading areas, entrance and exit drives, dividers, planters, and other similar permanent improvements.~~
- ~~(13) Location and type of any existing and proposed signs and of any existing or proposed lighting on the property which illuminates any part of any required yard.~~
- ~~(14) Location of existing canopied areas, any rock outcrops, any landslide areas, any springs and streams and other water bodies, and any areas subject to flooding. The site plan must be accompanied by a tree removal and mitigation plan containing the information required by section 42-554 of the tree removal and mitigation ordinance.~~
- ~~(15) Location, amount and type of any proposed landscaping, fences, walls, or other screening as required by chapter 134 of this Code and by the design regulations set forth in section 82-213 of this article.~~
- ~~(16) A vicinity map showing the general location of the property.~~
- ~~(17) Soils tests and similar information if deemed necessary by the planning director to determine the feasibility of the proposed development in relation to the design regulations set forth in section 82-213 of this article.~~
- ~~(18) a. If the applicant proposes to grade, strip, excavate, fill, undertake or cause any earth change on the site or stockpile any granular construction material in excess of 5,000 cubic yards on the site, he or she shall submit to the planning department an application for a grading permit, containing all of the information set forth in section 42-87 of this Code. The planning department shall forward such application for a grading permit to the engineering department who shall process the application in the manner set forth in section 42-88 of this Code.~~
  - ~~b. Such application for a grading permit may be submitted at the time the information set forth in this section is submitted to the planning department or at any time thereafter, but in no event shall the applicant proceed to grade, strip, excavate, fill, undertake or cause any earth change on the site or stockpile any granular construction material in excess of 5,000 cubic yards on the site until such time as such application has been approved by the city engineer.~~
- ~~(19) If the private property is connected to the existing skywalk system, as shown on the official skywalk map, or the applicant intends to connect to the planned skywalk system, as shown on the skywalk system plan map, location of the existing and planned portions of the skywalk system on such property and locations of all existing and planned skywalk system connections to neighboring property. If the private property is not connected to the existing skywalk system, as shown on the~~

official skywalk map, and the applicant does not intend to connect to the planned skywalk system, as shown on the skywalk system plan map, the applicant does not have to include provisions for the skywalk system on the site plan.

- (20) ~~If the proposed development involves the construction of a building by the city or by any other party on property leased from the city or if the proposed development involves the construction of parking facilities, landscaping or other improvements on the site of any such public building, the applicant shall submit architectural plans for the proposed building or improvement sufficient to enable the urban design review board to review, evaluate and make recommendations concerning the proposal as required by subsection 82-339(a) of this chapter. No such proposal shall receive final site plan approval from the planning director until the city council has approved the proposed design and placement of the building and/or related site improvements, after receiving the recommendations of the urban design review board and the plan and zoning commission pursuant to subsection 82-339(a) of this chapter.~~
- (21) ~~If the proposed development involves the reconstruction, alteration or demolition of all or any part of the exterior of a landmark or landmark site or the construction of any new improvement upon a landmark or landmark site so as to require a certificate of appropriateness from the historic preservation commission pursuant to section 58-62, the applicant shall submit to the planning department an application for a certificate of appropriateness. No such proposal shall receive final site plan approval from the planning director until such application has been approved by the historic preservation commission or by the city council on appeal.~~
- (22) ~~If the proposed development involves the construction of a structure within a historic district or the alteration of any exterior features of a structure within a historic district so as to require a certificate of appropriateness from the historic preservation commission pursuant to section 58-31 of this Code, the applicant shall submit to the planning department an application for a certificate of appropriateness, in compliance with the requirements of subsection 58-31(b) of this Code. No such proposal shall receive final site plan approval from the planning director until such application has been approved by the historic preservation commission or by the city council on appeal.~~
- (23) ~~If the proposed development is located within an NPC neighborhood pedestrian commercial district, the application shall also contain building elevations, including material and window specifications, for the proposed improvement sufficient to enable the plan and zoning commission to apply the design guidelines in section 82-214 of this article.~~
- (24) ~~In the event the development involves a site having an area greater than fifty lots or five acres, whichever is the lesser, a statement of whether any part of the site is in or adjacent to a floodplain, and if so, the 100-year flood level at the site.~~

### ~~Sec. 82-213. Design regulations.~~

~~— The design regulations provided in this section are necessary to ensure the orderly and harmonious development of property in such manner as will safeguard the public's health, safety and general welfare and to ensure that the future development of property in the city will not be~~

~~foreclosed by such development. 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 the following design regulations:~~

- ~~(1) The design of the proposed development shall make adequate provisions for surface and subsurface drainage, including submittal of a Stormwater Runoff Control Plan in compliance with section 106-136 of the municipal code, for connections to water and sanitary sewer lines, each so designed as to neither overload nor to substantially decrease the capacity of existing public utility lines in a fashion that will serve to inhibit or preclude the planned future development of other property within the city and so as not to increase the danger of erosion, flooding, landslide, or other endangerment of adjoining or surrounding property. The city's comprehensive plan shall be the principal guide in determining the prospective use and population density of other properties. However, the factors to be considered in arriving at conclusions on standards of design shall include those set forth in subsection 82-206(b)(2) of this article.~~
- ~~(2) The proposed development shall be designed and located within the property in such manner as not to unduly diminish or impair the use and enjoyment of adjoining property and to this end shall minimize the adverse effects on such adjoining properties from automobile headlights, illumination of required perimeter yards, refuse containers, and impairment of light and air. For purposes of this subsection, the term "use and enjoyment of adjoining property" shall mean the use and enjoyment presently being made of such adjoining property, unless such property is vacant. If vacant, the term "use and enjoyment of adjoining property" shall mean those uses permitted under the zoning district in which such adjoining property is located.~~
- ~~(3) The proposed development shall have such entrances and exits upon adjacent streets and such internal traffic circulation patterns as will not unduly increase congestion on adjacent or surrounding public streets and in a manner which will conform to the proposed future circulation of traffic throughout the city and provide for adequate fire protection access.~~
- ~~(4) To such end as may be necessary and proper to accomplish the standards in subsections (1), (2), and (3) of this section, the proposed development shall provide water, sewer, stormwater, street, erosion control or other improvements.~~
- ~~(5) All electrical, telephone, and cable television transmission systems shall be placed underground whenever reasonably practicable.~~
- ~~(6) The proposed development shall conform to all applicable provisions of state law and all applicable sections of this Code.~~
- ~~(7) If the private property is connected to the existing skywalk system, as shown on the official skywalk map, or the applicant intends to connect to the planned skywalk system, as shown on the skywalk system plan map, the proposed development shall have such connections to the existing and planned skywalk system and such internal skywalk system pattern as will best permit the optimal expansion of the skywalk system to serve the greatest number of properties possible and best provide for the expected skywalk system traffic through the property. If the private property is not connected to the existing skywalk system, as shown on the official skywalk map, and the applicant does not intend to connect to the planned skywalk system, as~~

shown on the skywalk system plan map, this design standard shall not apply to the proposed site plan.

- (8) — The proposed development shall provide landscaping, including plantings fences and screening in accordance with the landscape standards in the adopted site plan policies.
- (9) — The proposed development shall comply with the requirements of the tree removal and mitigation ordinance codified in Article X of Chapter 42 of this Code.
- (10) — The stormwater runoff control facilities installed in compliance with the runoff control plan shall be maintained in compliance with section 106-136.

**Sec. 82-214. Design guidelines within NPC districts.**

- (a) — In acting upon any site plan application for property located within an NPC neighborhood pedestrian commercial district, the plan and zoning commission shall apply the design regulations in section 82-213 of this article and the design guidelines in this section developed for the purpose of preserving the community character of the commercial corridor within the district. The design guidelines express the predominant character giving features along the commercial corridor. The commission may approve a site plan that does not comply with the design guidelines if it finds the overall development is in harmony with the commercial corridor, that the failure to comply with the design guidelines does not negatively impact the character of surrounding properties, and that the failure to comply with the design guidelines is due to the following:
  - (1) — An unusual lot shape, size, topography or double frontage. A lot over one acre in size shall always be considered to be of unusual size;
  - (2) — A need to facilitate a smooth transition between existing developments in the vicinity;
  - (3) — A need to accommodate existing development;
  - (4) — A need to preserve an existing building; or
  - (5) — A use with unique design requirements.
- (b) — The additional design guidelines applicable to any development within an NPC district are as follows:
  - (1) — Buildings should frame the street and maintain a minimal setback from the street.
  - (2) — The front facade of the first floor of the building on the primary commercial street should have a ratio of at least 40 percent window and window display area to total street facade.
  - (3) — The front entrance should be oriented to the street. On a corner lot, the building should have a well defined entrance on the primary commercial street.
  - (4) — Materials should be brick, stone, tile, stucco, or horizontal wood clapboard with a maximum width of six inches. Two story buildings are encouraged.
  - (5) — Commercial buildings with over 50 feet of building frontage should have the appearance of being broken into separate bays of between 20 to 35 lineal feet using structural elements, fenestration patterns, protruding or recessed bays, or architectural details.
  - (6) — Building frontage should occupy at least 50 percent of the primary street frontage.

- (7) ~~Off-street loading and parking spaces should be provided in compliance with sections 134-1376 and 134-1377 of the zoning chapter, subject to the following modifications:~~
- a. ~~The minimum number of off-street parking spaces is 60 percent of the number of spaces otherwise required by subsection 134-1377(a).~~
  - b. ~~Parking should not exceed the amount otherwise required by section 134-1377 of this Code.~~
  - c. ~~Parking should not use the front yard but should be concentrated along the side and in back of the building in the predominant pattern of character defining buildings.~~
  - d. ~~Shared parking among businesses or between business and residential projects will be allowed, provided a shared parking plan is presented at the time of application, signed by the property owners, ensuring nonduplication of parking. The shared parking must be within 300 feet of the business or dwelling.~~
  - e. ~~On-street parking directly adjacent to the occupant frontage shall count toward the minimum off-street parking requirement. Elimination of such on-street parking by the city shall have no effect on an approved site plan.~~
  - f. ~~Tandem parking spaces shall count toward the minimum off-street parking requirement if a parking plan demonstrates that the parking will be for employees and will be occupied for over four hours between changes.~~
  - g. ~~An emphasis of trees, shrubs and other plantings should be placed around the perimeter of any parking area and within large parking lots to create a more attractive area. The landscape plan should generally enhance the visual appearance of the building, parking area and any pedestrian areas.~~
- (8) ~~The following bulk regulations should be observed:~~
- a. ~~Minimum lot area:~~
    1. ~~Single family detached dwelling, 5,000 square feet.~~
    2. ~~Single family semidetached dwelling, 3,000 square feet.~~
    3. ~~Two family dwelling, 6,000 square feet.~~
    4. ~~Multiple dwelling, 10,000 square feet.~~
    5. ~~Mixed-use project, 10,000 square feet.~~
    6. ~~Shelter for the homeless, 8,000 square feet.~~
    7. ~~No minimum requirement for permitted nonresidential uses.~~
  - b. ~~Minimum lot area per dwelling unit:~~
    1. ~~Row and multiple dwellings, 2,000 square feet.~~
    2. ~~Shelter for the homeless, 300 square feet of lot size for each resident.~~
  - c. ~~Front yard: minimum of zero feet.~~
  - d. ~~Side yards: minimum of zero feet.~~
  - e. ~~Rear yard: None required, except when adjoining any R or C-0 district or portion of a PUD designated for residential use, in which case ten feet.~~
  - f. ~~Height: minimum of 15 feet, maximum of 45 feet.~~
  - g. ~~Number of stories:~~
    1. ~~Residential uses, a maximum of four stories.~~
    2. ~~All other permitted uses, a maximum of two stories.~~

- ~~(9) — Signs which are attached or projecting from the building and designed for the character of the building are preferred. Monument signs are allowed.~~
- ~~(10) — Any extension of parking into an adjoining residential district shall support the intent of the NPC neighborhood pedestrian commercial district and conform with the guidelines in this section.~~

**~~Sec. 82-214.01 — Design guidelines for extension of parking.~~**

~~In acting upon any site plan application which includes an extension of parking under the authority of section 134-1377(f)(8) into a residential district where it would otherwise be prohibited, the plan and zoning commission shall apply the design regulations in section 82-213. Further, the proposed site plan shall be denied unless it is shown to that such extension of parking meets such regulations and the following design guidelines:~~

- ~~(1) — The construction and use of this parking lot will have no significant detrimental impact on the use and enjoyment of adjoining properties.~~
- ~~(2) — No parking should be permitted in the required front yard of the “R” district unless compatible with the adjoining land use.~~
- ~~(3) — Adequate setbacks shall be provided to protect adjacent residentially zoned property. A minimum ten (10) foot setback from adjacent “R” district property lines should be observed.~~
- ~~(4) — Appropriate screening shall be provided to shield adjacent residential uses from the impacts of the parking lot.~~
- ~~(5) — Adequate landscaping shall be provided and maintained to buffer and beautify the parking area. Both interior and peripheral landscaping should be considered.~~
- ~~(6) — Where feasible, the entrance to the parking area should be from an adjoining alley or the less restrictive district.~~

**~~Sec. 82-214.05 — Design guidelines for multiple family dwellings, boardinghouses and roominghouses.~~**

~~In acting upon any site plan application which includes a multiple family dwelling, boardinghouse or roominghouse, the plan and zoning commission shall apply the design regulations in section 82-213 and the additional design guidelines set forth below. 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.~~

- ~~(1) — *Architectural character.* — New developments and alterations to existing development in or adjacent to existing developed areas shall be compatible with the existing architectural character of such areas by using a compatible design. Compatibility may be achieved through techniques such as the repetition of roof lines, the use of similar proportions in building mass and outdoor spaces, similar relationships to the street, similar window and door patterns, and/or the use of building materials that have color shades and textures similar to those existing in the immediate area of the proposed development. Brick and stone masonry shall be considered compatible with wood framing and other materials.~~
- ~~(2) — *Building height and mass.* — Buildings shall be either similar in size and height, or if larger, shall be articulated, setback or subdivided into massing that is proportional~~

to the mass and scale of other structures on the same block and adjoining blocks. Articulation may be achieved through variation of roof lines, setbacks, patterns of door and window placement, and the use of characteristic entry features. To the maximum extent feasible, the height, setback and width of new buildings and alterations to existing buildings should be similar to those of existing buildings on the same block. Taller buildings or portions of buildings should be located interior to the site. Buildings at the ends of blocks should be of similar height to buildings on the adjoining blocks.

- (3) ~~*Building orientation.*~~ To the maximum extent feasible, primary facades and entries shall face the adjacent public street. A main entrance should face a connecting walkway with a direct pedestrian connection to the public street without requiring all pedestrians to walk through parking lots or across driveways.
- (4) ~~*Garage access/location.*~~ If the prominent character of garage access and/or location is located to the rear of the properties in the surrounding neighborhood, then new construction should be compatible with such character.
- (5) ~~*Rooftop/second story additions.*~~ A rooftop or second floor addition, including but not limited to stairs and emergency egress, should not overhang the front or side walls of the existing building.
- (6) ~~*Emergency egress.*~~ All stairs and means of emergency egress extending more than 15 feet above grade and visible from the adjoining street should be completely enclosed with materials compatible in color and texture with the balance of the building.
- (7) ~~*Parking.*~~ Parking lots containing more than eight parking spaces should comply with the adopted landscape standards applicable to commercial development in the C-1 district.

#### **Sec. 82-214.1 Design guidelines for extension of parking.**

In acting upon any site plan application which includes an extension of parking under the authority of section 134-1377(f)(8) into a residential district where it would otherwise be prohibited, the plan and zoning commission shall apply the design regulations in section 82-213. Further, the proposed site plan shall be denied unless it is shown to that such extension of parking meets such regulations and the following design guidelines:

- (1) The construction and use of this parking lot will have no significant detrimental impact on the use and enjoyment of adjoining properties.
- (2) No parking should be permitted in the required front yard of the "R" district unless compatible with the adjoining land use.
- (3) Adequate setbacks shall be provided to protect adjacent residentially zoned property. A minimum ten (10) foot setback from adjacent "R" district property lines should be observed.
- (4) Appropriate screening shall be provided to shield adjacent residential uses from the impacts of the parking lot.
- (5) Adequate landscaping shall be provided and maintained to buffer and beautify the parking area. Both interior and peripheral landscaping should be considered.
- (6) Where feasible, the entrance to the parking area should be from an adjoining alley or the less restrictive district.

**Sec. 82-214.3. Design guidelines for vehicle display lots.**

~~Any site plan application which includes improvements to property used for display, hire, rental or sales of motor vehicles shall be denied by the plan and zoning commission unless the commission determines that the construction and use of the site will have no significant detrimental impact on the use and enjoyment of adjoining residential uses, and that the proposed site plan conforms with the design regulations in section 82-213 and the following additional design guidelines:~~

- ~~(1) The proposed development shall satisfy the open space and bufferyard requirements for development in the C-2 district set forth in the landscape standards in the adopted site plan policies.~~
- ~~(2) Any portion of the property to be used for outside storage, display or parking of vehicles shall:
  - ~~a. Contain at least one-half acre of land.~~
  - ~~b. Conform with the parking lot/display lot requirements for development in the "C-2" district set forth in the landscape standards in the adopted site plan policies.~~
  - ~~c. Be surfaced with an asphaltic or Portland cement binder pavement 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. Incorporate curbs or other substantial permanent barriers to prevent encroachment of the vehicles into the required setback and landscape areas. Precast wheel stops and other barriers which can be readily moved are not acceptable.~~~~
- ~~(3) There shall be no elevated display of motor vehicles in any required front yard.~~
- ~~(4) The employee and customer parking area shall be clearly designated and shall not be used for the parking, storage or display of motor vehicles for sale, rental or hire.~~
- ~~(5) All portions of the property used for the outside parking, display or storage of motor vehicles for sale, rental or hire shall be identified on the site plan and the perimeter shall be striped or otherwise conspicuously marked on the parking surface.~~

**Sec. 82-214.7. Design guidelines within D-R and C-3B districts.**

- ~~(a) The design guidelines within the D-R downtown riverfront district are intended to support and enhance the downtown riverfront as a safe and lively people-oriented open-space spine, connecting a series of distinct destination nodes within a urban setting of high quality buildings. The district is aimed at supporting redevelopment that will significantly enhance the downtown riverfront, attracting visitors and residents of the metropolitan region to a waterfront resource that has been underutilized for many years. These guidelines are intended to work with the D-R downtown riverfront district regulations in chapter 134 to assure that redevelopment adjacent to the river is pedestrian oriented and compatible with the new mixed-use neighborhoods, commercial and residential nodes planned for the area as further described in section 134-1035.~~



The design guidelines within the C 3B central business mixed use district are intended to establish a lively pedestrian scaled, urban setting. These guidelines are intended to work with the C 3B central business mixed use district regulations in chapter 134 to assure that redevelopment is pedestrian-oriented and compatible with the new mixed use neighborhoods.

(b) In acting upon any site plan application for property located within the D-R downtown riverfront district or C 3B central business mixed use district, the plan and zoning commission shall apply the design regulations in section 82-213 of this article and the design guidelines in this section. 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 an existing building is expanded by more than 50 percent of its gross floor area as of the time it became part of the D-R downtown riverfront district or C 3B central business mixed use district. If a building is expanded by less than 50 percent of its gross floor area as of the time it became part of the D-R downtown riverfront district or C 3B central business mixed use district, then these guidelines shall apply only to the expansion of the building.

(1) ~~Building Heights. Minimum height for all uses that are not built integral to the levee as part of the riverwalk redevelopment, should be the lesser of 36 feet or 3 stories.~~

(2) ~~Riverfront setbacks. Riverfront setbacks for all new construction (that is not built integral to the levee and as part of a riverfront park) should be a minimum of 100 (horizontal) feet from the high water mark of the river. Redevelopment adjacent to a riverfront park (not part of the levee reconstruction) should front a continuous public right-of-way. This could be either a road built to an urban standard, or an alternative profile of a minimum 20' width that clearly delineates a public right-of-way between new private development and the riverfront park.~~

(3) ~~Lighting. All new exterior lighting upon private property should be pedestrian in scale. The use of private overhead floodlighting is discouraged.~~

(4) ~~Residential building standards. New residential buildings should also comply with the following guidelines:~~  
a. ~~Building front entrances should face public rights-of-ways. Those buildings with river frontage should be oriented towards the riverfront (except when located above street level retail).~~  
b. ~~At least one building entrance for the residential uses should directly access the street when located above street level retail.~~  
e. ~~Buildings should have a building frontage on the principal street of not less than 70 percent of the lot frontage on the principal street.~~  
d. ~~Buildings should have a maximum setback of 15 feet from the public right-of-way.~~  
e. ~~Service entrances, waste disposal areas and other similar uses should be located adjacent to service lanes and away from major streets and the public right-of-way adjacent to the river.~~  
(5) ~~Commercial building standards. New commercial buildings should also comply with the following guidelines:~~

a. ~~Buildings should have a building frontage on the principal street of not less than 70 percent of the lot frontage on the principal street.~~

49D

- b. ~~— A minimum of 70 percent of the building frontage should be set within one foot of the front lot line.~~
- c. ~~— Building entrances on new development sites that have river frontage (and are not integral to the levy), should be oriented both towards the riverfront and the primary street.~~
- d. ~~— Service entrances, waste disposal areas and other similar uses should be located adjacent to service lanes and away from major streets and the public right-of-way adjacent to the river.~~
- e. ~~— Restaurants may operate outdoor cafes on public sidewalks while maintaining pedestrian circulation subject to obtaining an areaway permit.~~
- (6) ~~— Storage of any and all materials and equipment should take place within completely enclosed buildings. All open areas should be paved or landscaped, properly maintained and kept free from refuse and debris. All refuse collection containers and dumpsters should be enclosed on all sides by the use of a permanent wall of wood, brick, or masonry. The enclosure, including any gates for pedestrian and/or disposal truck access, should be constructed to provide at least a 75% opaque screen of the receptacle from any street.~~
- (7) ~~— All open areas not used for off-street loading or parking should be landscaped in accordance with the Des Moines Landscape Standards. (See Site Plan Landscape Policies)~~
- (8) ~~— Access doors for any warehouse use and any loading docks should not front on any public street. That portion of a building fronting on a public street should be used in an office or other commercial use.~~

**Sec. 82-214.8. Gas Station/Convenience Store Site Plan Design Guidelines.**

~~— Any site plan application which includes property used as a gas station or convenience store shall be approved by the plan and zoning commission if the proposed site plan conforms with the design regulations in section 82-213 and the following additional design guidelines, unless the commission determines that the construction and use of the site will have a significant detrimental impact on the use and enjoyment of adjoining residential uses:~~

- (1) ~~Site Design.~~
  - a. ~~The optimal layout of any individual site requires an in-depth understanding of local context and a thorough site analysis. The components of a gas station and convenience store to be considered in site design include, but are not limited to:~~
    - (i) ~~Primary structure/retail sales building/single or multiple tenant;~~
    - (ii) ~~Pump island, canopy structure, and lighting;~~
    - (iii) ~~Refuse, service and storage area;~~
    - (iv) ~~Circulation systems and parking;~~
    - (v) ~~Service bays;~~
    - (vi) ~~Ancillary uses such as car washes, drive-through uses, ATMs and telephones.~~
  - b. ~~Maximum size of site should not exceed two (2) acres without a rezoning to a PUD Planned Unit Development pursuant to Chapter 134, Division 13 of the Municipal Code of the City of Des Moines and site review under a~~

Conceptual Plan approved by the Plan and Zoning Commission and City Council.

- e. ~~Minimum open space should be 20 percent (20%) of the site or 1,000 square feet per vehicle fueling location, whichever is greater.~~
- d. ~~All development proposals should show evidence of coordination with the site plan as well as arrangement of buildings and planning elements of neighboring properties by:
  - (i) ~~Responding to local development patterns and the streetscape by use of consistent building setbacks, orientation and relationship of structures to the street and linkages to pedestrian facilities;~~
  - (ii) ~~Seeking shared access with adjoining commercial uses where feasible to minimize curb cuts and enhance pedestrian and vehicular circulation;~~
  - (iii) ~~Minimizing cross traffic conflicts within parking areas.~~~~
- e. ~~The site plan shall mitigate the negative impacts from site activities on adjoining uses as follows:
  - (i) ~~Service areas, storage areas and refuse enclosures should be oriented away from public view and screened from adjacent sites;~~
  - (ii) ~~Drive through windows, menu boards and associated stacking lanes should be oriented away from residential areas or screened from public view;~~
  - (iii) ~~Auto repair bay openings and car wash openings should be oriented away from residential uses;~~
  - (iv) ~~Lighting should be non-invasive to adjoining residential use.~~~~
- f. ~~The site plan shall provide identifiable pedestrian access from adjoining public pedestrian routes through the site to the primary building and from accessory functions within the site. This can be accomplished by use of special paving colors or textures and appropriately scaled lighting.~~

(2) ~~Architecture.~~

- a. ~~The following architectural guidelines encourage creative response to local and regional context and contribute to the aesthetic identity of the community.~~
- b. ~~Building design should consider the unique qualities and character of the surrounding area and be consistent with the city's comprehensive plan, including all community character plans, redevelopment plans, neighborhood plans, community preservation plans, and similar documents incorporated by reference pursuant to city council resolution. Where character is not defined by said plan and all documents incorporated by reference, building design should be of a high quality with primary use of durable materials such as masonry, block, or stone.~~
- e. ~~A facility occupying a pad or portion of a building within a larger commercial center should be designed to reflect the design elements of that center.~~
- d. ~~Drive-through elements should be integrated into the building rather than appear to be applied or "stuck on" to the building.~~

- e. ~~All sides of a building should express consistent architectural detail and character, with a primary use of durable materials such as brick, masonry block, or in special instances a predominant material found in the surrounding commercial area. Columns should be designed to minimize visual impact.~~
- f. ~~Walls, pump island canopies and other outdoor covered areas should be compatible with the building, using similar material, color and detailing.~~
- g. ~~To encourage visually interesting roofs, variations in the roof line and treatments such as extended eaves and parapet walls with cornice treatments are encouraged.~~
- h. ~~Perceived height and bulk should be reduced by dividing the building mass into smaller-sealed components. Examples of treatments that could be used to avoid excessive bulk and height include:
 
  - ~~(i) Low scale planters and site walls.~~
  - ~~(ii) Wainscot treatment.~~
  - ~~(iii) Clearly pronounced eaves or cornices.~~
  - ~~(iv) Subtle changes in material color and texture.~~
  - ~~(v) Variation in roof forms.~~
  - ~~(vi) Covered pedestrian frontages and recessed entries.~~
  - ~~(vii) Deeply set windows with mullions.~~~~
- i. ~~Canopies:
 
  - ~~(i) Integration of materials on canopies that are similar or compatible to those used on the building or site walls is desirable (e.g., wrap the canopy columns with brick that matches the building). Multiple canopies or canopies that express differing masses are encouraged.~~
  - ~~(ii) Canopy height should not be less than 13'-9" as measured from the finished grade to the lowest point on the canopy fascia. The overall height of canopies should not exceed 18'.~~~~
- j. ~~All display items for sale, excluding seasonal items (i.e., sand, salt, pop, firewood) should be located within the main building. All outdoor display of seasonal items shall be identified on the site plan and be located outside of any required setbacks. No display of seasonal items should exceed 5' in height.~~

(3) ~~Landscape Design.~~

- a. ~~Landscaping is integral to the overall design concept and should be carefully planned to enhance the overall appearance and function of the site.~~
- b. ~~Landscape buffers with screen fencing should mask the site from adjacent residential uses. Plantings that exceed the minimum Des Moines Landscaping Standards may be required.~~
- e. ~~Dense landscaping or architectural treatments should be provided to screen unattractive views and features such as storage areas, trash enclosures, utility cabinets and other similar elements.~~
- d. ~~A site design for projects located at a street intersection should provide special landscape treatments, including by way of example perennial plant beds, site walls, native grasses, decorative sign foundations and housing.~~

- e. ~~Proper maintenance and timely replacement of plant material is required and will be enforced based on the approved site plan.~~
  - f. ~~Monument signs are encouraged and are required when the site adjoins a residential district.~~
- (4) ~~Lighting.~~
- a. ~~Lighting of gas stations and convenience stores should enhance safety and provide light levels appropriate to the visual task with minimal glare, light trespass and excess site brightness. Lighting should not be a nuisance or a hazard.~~
  - b. ~~Direct light trespass beyond property lines is prohibited. The maximum horizontal illuminance at grade and the maximum vertical illuminance at five feet above grade measured at the property line should not exceed Illuminating Engineering Society of North America (IESNA) recommended practices for light trespass. (0.5 footcandles for residential, 2.0 footcandles for commercial). The site plan must contain illuminance models showing light levels throughout the site.~~
  - c. ~~Light fixtures mounted under canopies should be completely recessed into the canopy with flat lenses that are translucent and completely flush with the bottom surface (ceiling) of the canopy. Generally, lights shall not be mounted on the top or sides (fascias) of the canopy and internally illuminated/entirely translucent canopies should be prohibited. However, accent lighting on the sides (fascias) of the canopy may be permitted.~~
  - d. ~~Parking Lot and Site Lighting:~~
    - (i) ~~All luminaries should be of full cut off design, aimed downward and away from the property line;~~
    - (ii) ~~Maximum pole heights should not exceed 20'.~~
  - f. ~~Building Mounted Lighting:~~
    - (i) ~~All luminaries should be a full cut-off design and aimed downward.~~
    - (ii) ~~All luminaries should be recessed or shielded so the light source is not directly visible from the property line.~~

**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 should 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.~~

- (a) No building permit shall be issued for any development involving any use until a site plan has been submitted and approved for such development in accordance with this article, except for the following:
  - (1) One or two family attached and detached dwellings not within an NPC neighborhood pedestrian commercial district;
  - (2) Except for delayed deposit services and pawnbrokers as defined in section 134 3, nonresidential building or paving projects provided: i) the property is not within an NPC neighborhood pedestrian commercial district, D-R downtown riverfront district or C 3B central business mixed use district; ii) the project does not involve the extension of parking under the authority of section 134 137(f)(8) into a zoning district where such parking would be otherwise prohibited; and iii) the project has a total site area of 10,000 square feet or less;
  - (3) Fire stations owned and operated by the city;
  - (4) Publicly owned parks, playgrounds, golf courses, recreation areas;
  - (5) Agriculture uses, including nurseries and truck gardens, provided that no retail sale shall be permitted on the premises;
  - (6) Uses of land or structures not within an NPC neighborhood pedestrian commercial district customarily incidental to and subordinate to those uses set forth in subsections (a)(1) through (5) of this section;
  - (7) Except for delayed deposit services and pawnbrokers as defined in section 134 3, development within the NPC neighborhood pedestrian commercial district, D-R downtown riverfront district or C 3B central business mixed use district with a total site area of 2,500 square feet or less and which is determined by the planning

**Sec. 82-215. Application and execution.**

- (12) Access doors for any warehouse use and any loading docks should not front on any public street.
- (13) Gas stations/convenience stores should 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 include ground floor retail or commercial space, be designed for conversion to retail or commercial space, or have significant architectural detail.

~~director to not increase the nonconformance of such development with the applicable design guidelines in this article.~~

~~Additionally, no certification of occupancy shall be issued for such development until all terms and conditions of the approved site plan have been satisfactorily completed or provided for.~~

- ~~(b) Construction, grading, or other development activities for those uses listed subsection (a) of this section shall be carried out only in substantial compliance with the approved site plan and any conditions or restrictions attached thereto.~~
- ~~(c) When a site plan has been approved for property pursuant to this article, the property shall thereafter be used and maintained in substantial compliance with the approved site plan. No person shall use property in a manner or physical condition that does not substantially conform to the approved site plan for such property.~~

### **Sec. 82-216. Validity of approval.**

- ~~(a) A site plan shall become effective upon certification of approval by the planning director pursuant to section 82-208 or 82-209 of this article. If an appeal is filed, a site plan shall not become effective until all appeals have been decided.~~
- ~~(b) The approval of any site plan required by this article shall remain valid for two years after the date of approval, after which time the site plan shall be deemed null and void if the development has not been established or actual construction commenced. For the purpose of this article the term "actual construction" shall mean that the permanent placement of construction materials has started and is proceeding without undue delay. Preparation of plans, securing financial arrangements, issuance of building permits, letting of contracts, grading of property, or stockpiling of materials on the site shall not constitute actual construction.~~

### **Sec. 82-217. Amendment.**

~~Any approved site plan may be amended in accordance with the standards and procedures established in this article. However, the planning director shall waive such procedures and fees if the director determines that a proposed amendment involves only a minor change in the approved site plan. Any such waiver by the director shall be in writing. The director shall notify the plan and zoning commission in writing of any such waiver for property located in the NPC neighborhood pedestrian commercial district. Within the meaning of this section, minor changes shall include but are not limited to the following:~~

- ~~(1) A change to move building walls within the confines of the smallest rectangle that would have enclosed each originally approved building or to relocate building entrances or exits or to shorten building canopies.~~
- ~~(2) A change to a more restrictive use, provided there is no reduction in the amount of off-street parking as originally approved.~~
- ~~(3) Outside the NPC district, a change in angle of parking or in aisle width in accordance with subsection 134-1377(g) of this Code, provided there is no reduction in the amount of off-street parking as originally approved.~~
- ~~(4) A change in location of ingress and egress drives of not more than 100 feet, provided such change is required by the engineering department.~~



- (5) ~~A substitution of plant species, provided a nursery person, landscape architect, engineer or architect certifies the substituted species is similar in nature and in screening effects.~~
- (6) ~~A change in type and design of lighting fixtures, provided an engineer or architect certifies there will be no change in the intensity of light at the property boundary.~~
- (7) ~~A change to increase peripheral yards.~~

**Sec. 82-219. Penalties.**

- (a) ~~Appropriate actions and proceedings may be taken by law or in equity to prevent any violation of this article; to prevent unlawful construction; to recover damages; to restrain, correct, or abate a violation; and to prevent illegal occupancy of a building, structure or premises, and these remedies shall be in addition to the penalties described in section 1-15 of this Code.~~
- (b) ~~No person shall park a vehicle upon property subject to an approved site plan except within an area designated by that site plan to be used for parking, loading or vehicle display, except temporary parking of vehicles shall be permitted with the consent of the owner or tenant of the property upon areas designated on the approved site plan as parking areas, paved storage areas, or drive aisles not required for vehicular access to the required public parking, for the following activities:~~
  - (1) ~~As necessary for the repair and maintenance of a parking lot or vehicle display lot, including but not limited to snow removal and resurfacing.~~
  - (2) ~~During loading, unloading and rotation of vehicles at a vehicle display lot.~~
  - (3) ~~Temporary parking by persons not under the direction or control of the business, provided that such a vehicle is moved to a location in conformance with the approved site plan within one hour after the vehicle is placed under the control of the business.~~

~~The requirements of this subsection may also be enforced as a violation of subsection 114-361.02(e) of this Code.~~

**Sec. 98-75. License required for private landfill sites for construction or demolition materials.**

- (a) No person shall operate or permit the operation on his or her property of a disposal site in the city for the disposal of solid waste from construction or demolition activities unless such person shall have first applied for and received a license to do so from the city. Such a license shall be issued by the city council upon application by such person filed with the zoning enforcement officer; must be accompanied by a ~~special use permit issued~~ conditional use approval by the city board of adjustment, and a state permit issued by the appropriate state agency to conduct a construction or demolition materials disposal operation on the site in question; must demonstrate full present and contemplated compliance with the specific subsections of this section and the operational details and physical site proposals contained in plans accompanying the application, as well as the ability to do so; and shall be subject to annual renewal by the city council as set forth in this section. In reviewing the demolition landfill site application, the city council must weigh the need for such landfill to economically dispose of demolition and construction

rubble against the inherent hazard, evaluated on the information and criteria in this subsection, and with professional advice as required. Such need must likewise be weighed against the potential for site pollution or danger to persons or property who might predictably have direct or indirect contact with the site. To merit approval for licensing, such proposed operation must be demonstrated by the application to be operationally feasible and to be substantially free of negative environmental effect as it is proposed to be operated upon the site proposed. The application for a license to operate a disposal site for the disposal of solid waste from construction or demolition activities shall be accompanied by the documentation described in this subsection. Plans for construction and demolition landfills shall be prepared under the direct supervision of a registered engineer in conformity with I.C. ch. 542B. Such requirement shall not preclude the inclusion in the application of reports of geologists, architects, landscape architects, or such other disciplines as may be necessary or desirable to substantiate proposals contained in the application. The plans shall show conformance to the following requirements:

- (1) *Location of site.* The location of the site shall conform to the following:
  - a. The site shall be located outside of floodplain or riverfront land unless such requirement is waived by the appropriate state agency.
  - b. If the site is within 1,000 feet of a federal or state highway or major city thoroughfare, the site must be satisfactorily screened by natural objects, planting, fences or other.
  - c. The site shall be at least 1,000 feet from any existing well that draws water for human or livestock consumption unless hydrologic conditions are shown to be such that a greater or lesser distance is proper.
- (2) *Zoning and land use.* The application will be accompanied by a copy of the conditional use approval ~~special use permit~~ issued for such operation on the site by the city board of adjustment and the plan submitted with the application shall:
  - a. Be accompanied by a map showing all zoning within 1,000 feet surrounding the site. The plan shall also indicate the land use proposed for the site after the filling is completed, although such indication shall not be binding upon the city. A proposed land use which will be an impediment to the city's execution of its general plan will not be approved.
  - b. Indicate the land use shown for the site area in the future in the general plan for the city.
- (3) *Site plan.* The following particulars shall be included in maps of the site plan, as set forth in this subsection, and shall accompany the application:
  - a. A map of the disposal site and immediate surroundings, on which a north arrow and scale of drawing are indicated. Generally, a scale of less than one inch to 100 feet will not be approved.
  - b. The boundaries of the disposal site shall be shown thereon with sufficient data, including legal description, that a land surveyor can easily locate the boundary. Natural and manmade monuments indicating the boundary shall be noted. Where the site is located in an undeveloped area, four-inch boundary markers at least six feet high and painted a bright color shall be used to identify the boundary so that field inspection teams can easily identify the site.

- c. Two-foot contours of the existing terrain shall be shown thereon.
  - d. All existing utilities, including storm and sanitary sewers, which lead up to or cross the site shall be shown thereon.
  - e. Existing and future drainage shall be shown thereon along with any proposed storm sewers.
  - f. The location of the drill holes required by subsection (a)(6)a, of this section shall be shown thereon.
  - g. Two-foot contours of the final proposed terrain shall be shown on a separate drawing.
- (4) *Vicinity map.* A map showing the area in the vicinity of the site, which shall be known as the vicinity map, shall be submitted, of a scale of one inch to 600 feet or less. The area covered by the vicinity map shall be sufficient to contain the following:
- a. Location of test holes for the monitoring of water quality and the findings from each.
  - b. Streets and street names, as well as all existing public rights-of-way on and adjacent to the site.
  - c. The nearest fire hydrants. Generally, if there is not a fire hydrant adjacent to the entrance drive and within 300 feet of the active portion of the landfill site, a fire hydrant shall be so installed and connected with an appropriate extension of the water main. If covering and compacting is performed daily or if other equivalent means of providing fire protection are available, this requirement may be waived by the city council (see subsection (a)(7)d of this section).
  - d. The haul road routes from the nearest city truck route.
  - e. Proposed screening of the site from highways, streets, parks and residences and other amenities, as well as the schedule of installation of such; such screening shall meet the requirements of chapter 134 of this Code and shall have been demonstrated to and approved by the board of adjustment.
  - f. All private wells within 1,000 feet of the site shall be located and identified thereon.
  - g. All occupied homes and buildings on the site or within 1,000 feet of the boundaries thereof shall be shown, with their addresses and uses indicated, by color coding or otherwise.
- (5) *Traffic.* The haul routes shown in the plan shall be reviewed by the department of engineering and the chief civil engineer, who shall make recommendations thereon to the city council. Such haul routes shall be chosen to avoid undue hardships to residents living adjacent to them and to minimize the likelihood of premature deterioration of city streets so chosen.
- (6) *Soils and geology.*
- a. The plans shall contain a description of the drill holes shown on the site plan, which shall be sufficient in number to prepare geological cross sections of the site, to facilitate a determination of the acceptability of the site location.
  - b. The water table depth and bedrock depth shall be indicated. If the bedrock is excessively deep, it may be estimated.

- c. A soil report shall be provided which indicates the acceptability of the soil on the site for cover material and the stability of the slopes after the fill is complete. The vulnerability of the soil classification to erosion shall also be indicated.
- (7) *Operating site.*
- a. The estimated active life of the site and the total cubic dimensions of the area to be filled shall be indicated.
  - b. The volume of construction and demolition material expected annually and on the peak days shall be indicated.
  - c. The number, size and shape of cells of demolition material shall be indicated.
  - d. The approximate depth and type of cover material shall be indicated. The volume of cover material needed for the entire site shall be indicated as well as the source and soil classification of the cover material and frequency of covering. Once-a-week compacting of demolition material and covering with dirt will be acceptable, provided a bulldozer with a blade, operator on call, and a stockpile of cover material are available at all times on the site if a fire occurs. More frequent covering and compacting may be required by the city if it is deemed necessary to abate a nuisance and shall be mandatory if the requirements of subsection (a)(4)c of this section for fire hydrants are not met.
  - e. The times at which the gates will be open as well as provisions for maintaining the fence at locations required in this section shall be indicated.
  - f. The intended continuing vector control, principally rat abatement and mosquito abatement, shall be indicated.
  - g. The personnel and equipment planned to operate the site, and the hours and days of the week when they will be on the site, shall be indicated.
- (8) *Summary of environmental controls.* Expected environmental impact problems, with specific treatment or controls intended to eliminate or mitigate negative effects of each, shall be listed.
- (9) *Insurance.*
- a. The applicant shall file a certificate of insurance evidencing the issuance to the applicant of liability insurance which shall protect the public and any and all persons from injury which may be sustained because of the operation or condition of the landfill and that the applicant carries insurance which meets the requirements of the state worker's compensation law. Proof of such insurance shall show a minimum cancellation time of ten days and shall embody a requirement that the city shall have a right to such notice before such cancellation can become effective. The proof shall specify evidence of the following forms of insurance protection:
    - 1. Liability insurance covering all operations performed by the licensed applicant and all persons in the licensed applicant's direct employment.
    - 2. Public liability insurance covering all operations performed by any subcontractor or independent contractor to whom a portion of the operations may have been assigned or which in the future be

- assigned or by any person or legal entity acting for or on behalf of the licensed applicant at or on the site.
3. Motor vehicle bodily injury insurance and property damage liability insurance on motor vehicles employed on the site, whether or not owned by the licensed applicant or by either the subcontractors or independent contractors under contract to the licensee or by any other person or legal entity acting for or on behalf of the licensed applicant at or on the site.
    - b. The main protection shall be as follows:
      1. Public liability insurance, \$250,000.00 per person, \$500,000.00 per accident.
      2. Motor vehicle bodily injury, \$250,000.00 per person, \$500,000.00 per accident.
    - c. The city shall be named as an additional insured under all liability policies without expense to it.
- (b) *License fee.* An annual license fee of \$800.00 payable to the city treasurer shall accompany the initial application for the license and each application for renewal of the license.
- (c) *Renewal requirements.* An application for renewal need comply with the documentation requirements of subsection (a) of this section only if there has been a substantial change in the conditions or circumstances on or off the site which significantly affects the proposed operation or its effects during the proposed renewal period, except that a showing must be made in such application that required insurance is in force and has continued in force during the current license year. The application for such renewal must specifically negate or affirm the existence of any such circumstances or conditions and shall be documented accordingly. The application for renewal must also be accompanied by a showing of a current permit, issued by the appropriate state agency, for the operation of the construction or demolition materials landfill site. The zoning enforcement officer, upon receipt of such application for renewal, shall process the application as though it were an initial application for the license and shall report his or her findings and recommendations thereon, which shall be reviewed by the city council before issuance of the renewal.
- (d) *Site accessibility.* The location of the fence and gates, which shall be provided to exclude people from the active fill site, shall be shown. They shall be located to prevent illegal dumping, children from playing on the site, and debris from being blown off the site. The fence shall be at least six feet high and composed of a metal fabric, and it shall comply with all street intersection setback requirements. The fence shall be constructed before landfill operations begin. For purposes of this subsection, the term "active fill site" shall mean that portion of the land covered by the license which is in fact regularly receiving waste, whether or not at the instance of the applicant. The applicant shall maintain any unfenced area free of solid waste, and in the event of accumulation of waste upon or abutting the site, the director of building may require the applicant to install such further fencing as can ensure that the then-active remainder of the site shall remain free of unauthorized or improper accumulation of solid waste.
- (e) *Signs.* A prominent legible sign shall be provided at all site entrances indicating the name of the site owner and operator and emergency telephone numbers.
- (f) *Public agencies.* Neither the city nor any other public agency shall be required to obtain the license required by this section, but each such public body shall file with the council

before beginning operation and annually thereafter evidence of substantial compliance with all subsections of this section except the requirements of subsections (a)(2), (a)(9), and (b) of this section. It is, however, specifically provided that such exemption from licensing shall not operate to exempt the city or other public agencies from any other specific requirements of law relating to or regulating such operation to which such operation would be otherwise subject.

- (g) *Plan content mandatory.* The operational details and physical site proposals contained in the plans filed with an application which has been approved by the city council shall be obligatory and binding upon the licensee, who shall conform to each such detail and proposal unless specifically relieved of such conformance by the city council.
- (h) *Revocation or denial of license renewal.* If there is a substantial failure on the part of the licensee to conform to the requirements of state or federal statutes or regulations or the requirements set out in this section, as well as those made obligatory and binding upon the licensee because of their inclusion in the application and approval by the city council or other city ordinances, the city manager shall report the noncompliance to the city council, which shall set a public hearing thereon and direct that the notice of the time, date and place of the public hearing and of the city manager's report be given to the licensee. Such hearing shall occur not less than ten days after such notice has been mailed to the licensee at the address shown in the application or such other address as has been provided by the licensee during the period of the license. If, upon such hearing, the city council shall find substantial noncompliance by the licensee with any of such requirements, the city council may revoke the license or, if such determination is made while an application for renewal is pending, may deny renewal of the license. Notice of such revocation or denial following such hearing may be either by formal notice to the licensee at the appropriate address or by so advising representatives of the licensee personally present at such hearing or by any other means reasonably calculated to apprise the licensee of such revocation or such denial. No person whose license shall have been revoked or the renewal thereof denied pursuant to this section and no successors or assigns or other legal entities in which such person shall have a substantial interest may obtain a license pursuant to this section within the city for a period of two years from the date of cessation of activities at such landfill site pursuant to such revocation or denial. The operation of a disposal site without having a presently valid license to do so shall be prohibited.

#### **Sec. 98-76. Transfer station license.**

- (a) *Required.* No person shall operate or permit the operation on his or her property of a transfer station in the city unless such person shall have first applied for and received a license to do so from the city. A license to operate a transfer station shall be issued by the city council upon application filed with the zoning enforcement officer. The application must be accompanied by any state permit required by state law or regulation and issued by the appropriate state agency to conduct a transfer station operation on the site in question; must demonstrate full present and contemplated compliance with the zoning regulations in chapter 134, and the specific subsections of this section and the operational details and physical site proposals contained in plans accompanying the application, as well as the ability to do so; and shall be subject to annual renewal by the city council as set forth in this section. In reviewing such application, the city council must weigh the need for the

transfer station against the potential for site pollution, danger to persons or property likely to have direct or indirect contact with the site, the feasibility of the operation, the likelihood of freedom from negative environmental effect of such operation, and such other factors as shall reflect the public interest in balance against the interests of the applicant to operate such a facility on the site in question.

- (b) *Information required and site plans.* The application for a license to operate a transfer station shall be accompanied by plans prepared under the direct supervision of a registered engineer in conformity with I.C. ch. 542B. The site as shown on the plans shall physically conform to the following requirements, and the application shall contain either sufficient written information to show such conformity or it shall be shown by depiction of physical detail on the plan, as applicable:
- (1) *Site.* The site shall be located outside floodplain or riverfront land unless such requirement is waived by the appropriate governmental agency. The boundaries of the site shall be shown on the plan with sufficient data, including legal description, that a land surveyor can easily locate the boundaries. Two-foot contours of the existing terrain shall likewise be shown on the plan. Proposed screening of the site from highways, streets, parks, residences and other amenities, as well as the schedule of installation of such, shall be shown; such screening shall meet the requirements of chapter 134 of this Code and shall have been demonstrated to and approved by the board of adjustment. The site shall be enclosed with a chainlink fence not less than six feet in height, which fence shall completely surround all portions of the site intended to be used in connection with the operation of the transfer station. The location of such fence and of the access gates through such fence shall be shown on the plan.
  - (2) *Permits.* The application will be accompanied by a copy of the conditional use approval ~~special use permit~~ issued for such operation by the board of adjustment and by a copy of the permit issued by the applicable state agency, each approving the operation of a transfer station on the site.
  - (3) *Vehicular travel.* The plan shall show the areas on the site over which haul vehicles and transfer equipment will travel. Such areas shall be hard surfaced, and the thickness and composition of such surfaces shall be shown on the plans. Barricades of a semipermanent nature, affixed to the ground, shall be placed to prevent vehicular travel on unsurfaced areas on the site; the location of such barricades shall be shown on the plan. The haul road routes from the nearest city truck route shall be shown and identified on the plan. Such routes shall be reviewed by the department of engineering and the chief civil engineer, who shall make recommendations thereon to the city council. Such haul roads shall be chosen to avoid undue hardship to residents living adjacent to them and to minimize the likelihood of premature deterioration of city streets so chosen.
  - (4) *Unloading area.* All unloading, compacting and transfer activities shall be conducted within a fully enclosed structure. Each such structure shall be clearly depicted on the plan, with dimensions, in such fashion as to clearly show the type and location of equipment, the proposed routing of unloading and transfer vehicles, all vehicle entrance and exit facilities to and from such structure, and the waiting area for unloading vehicles, which shall be sufficient to accommodate expected traffic. Such structures and waiting area shall be of sufficient size and appropriate

design as will ensure that the volume of vehicles expected on site at any one time can be accommodated without spillover on surrounding streets.

- (5) *Drainage and sewers.* Floor surfaces in each unloading, compacting and transfer structure shall be so constructed that they can be cleaned by flushing and that they will permit the draining of liquids without ponding; all such floor surfaces shall be equipped with floor drains or a sump pump and with a trap or other mechanical device which shall prevent the passage of solids, which system shall be connected to a sanitary sewer. A storm drainage system for the site shall provide adequate storm drainage with minimum ponding and shall connect to a storm sewer. All interior drainage lines from the unloading, compacting and transfer areas as well as other drainage lines within the site shall be adequate to handle volumes of water and liquids which may be expected. All drainage and sewer systems, floor drains, floor surface construction and locations of connections to sewers shall be clearly identified in the plan, showing dimensions and composition where appropriate.
- (6) *Sanitation and environmental control.* All solid waste shall be confined to unloading, compacting and transfer structures, and all solid waste remaining at the transfer station at the end of each day shall be stored in leakproof, flyproof, and rodentproof containers. Vector control, principally rat abatement and mosquito abatement, shall be the responsibility of the operator. The transfer station site shall be kept in a suitably clean and sanitary condition at all times. The application shall list the provisions at the site and the schedule for cleaning vehicles, structures and grounds, as well as the intended continuing vector control.
- (7) *Fire prevention.* Burning of solid waste, either open or controlled, is prohibited at the transfer station site. If a fire hydrant is not located adjacent to the property and within 300 feet of the unloading, compacting and transfer structure, a fire hydrant shall be so installed and connected to an appropriate extension of the water main. The location of the nearest hydrants to the transfer station shall be shown on the plan, as shall such installations and extensions, where applicable.
- (8) *Equipment.* The transfer station shall be so designed and maintained that the operational failure of one component part will not result in a total shutdown of the operation. An inventory of the equipment to be used in connection with the unloading, compacting and transfer operation shall be contained in the application, as well as a list of backup equipment available or, failing direct availability, the sources from which such equipment shall be obtained in time of need.
- (9) *Prohibited materials.* Sewage solids or liquids and hazardous wastes shall not be unloaded or accepted at the transfer station. Solid waste material of such bulk as cannot be accommodated by direct transfer shall likewise be excluded from the transfer station.
- (10) *Recycling.* If the operation of the transfer station includes isolation, segregation and gathering of materials of a like or similar kind for salvage and reutilization by recycling, the equipment, methods and proposed operation in connection therewith shall be fully depicted and described in the application. Solid waste which is received at the transfer station site and which is not thereat separated for recycling may only be disposed of by hauling to a sanitary disposal project which has been approved by the appropriate governmental agency and which is legally operating. Scavenging at the transfer station site shall be prohibited, and all materials so



separated and gathered for salvage and reutilization by recycling shall be retained in suitable containers as described in this division until removed by appropriate vehicles to off-site destinations.

- (11) *Personnel and hours.* The personnel planned to operate the site, the times during which the gates will be open, and the hours and days of the week during which the site will be open to receive solid waste shall be indicated in the application. Appropriate signs meeting the requirements of chapter 134 of this Code for the zoning district in which located shall be located at all entrance gates, shall be lighted if appropriate, shall identify such hours, shall list prohibited materials, and shall contain such further information as will ensure conformance of visitors to the site to the requirements of this section. An attendant shall be on duty at the site at all times when it is open for public use.
- (12) *Insurance.*
- a. The applicant shall file a certificate of insurance evidencing the issuance to the applicant of liability insurance which shall protect the public and any and all persons from injury which may be sustained because of the operation or condition of the transfer station and that the applicant carries insurance which meets the requirements of the state worker's compensation law. Proof of such insurance shall show a minimum cancellation time of ten days and shall embody a requirement that the city shall have a right to such notice before such cancellation can become effective. The proof shall specify evidence of the following forms of insurance protection:
1. Liability insurance covering all operations performed by the licensed applicant and all persons in the licensed applicant's direct employment.
  2. Public liability insurance covering all operations performed by any subcontractor or independent contractor to whom a portion of the operations may have been assigned or which in the future may be assigned, or by any person or legal entity acting for or on behalf of the licensed applicant at or on the site.
  3. Motor vehicle bodily injury insurance and property damage liability insurance on motor vehicles employed on the site, whether or not owned by the licensed applicant or by either the subcontractors or independent contractors under contract to the licensee or by any other person or legal entity acting for or on behalf of the licensed applicant at or on the site.
- b. The main protection shall be as follows:
1. Public liability insurance, \$250,000.00 per person, \$500,000.00 per accident.
  2. Motor vehicle bodily injury, \$250,000.00 per person, \$500,000.00 per accident.
- c. The city shall be named as an additional insured under all liability policies without expense to it.
- (13) *License and renewal.* An annual license fee of \$800.00 payable to the city treasurer shall accompany the initial application for the license and each application for renewal of the license. The provisions for renewal of the license for construction or

demolition materials disposal sites shall likewise apply to the annual renewal of a transfer station license.

- (14) *Public agencies.* Neither the city nor any other public agency shall be required to obtain the license required by this section, but each such public body shall file with the council before beginning operation and annually thereafter evidence of substantial compliance with all subsections of this section except the requirements of subsections (a) and (b)(12), (13) and (15) of this section. It is, however, specifically provided that such exemption from licensing shall not operate to exempt the city or other public agencies from any other specific requirements of law relating to or regulating such operation to which such operation would be otherwise subject.
- (15) *Revocation or denial.* The provisions for revocation or denial of renewal of a license for construction or demolition materials disposal sites shall apply to the license and licensee of a transfer station.
- (c) *Delivery of waste.* Every person operating a transfer station licensed under this section shall deliver or cause to be delivered all solid waste coming within the control of the transfer station to a sanitary disposal site operating under permit from the state department of natural resources pursuant to I.C. ch. 455B.

#### **Sec. 98-116. Recycling at multifamily residential premises.**

- (a) *Responsibility of owner or operator.* It shall be the responsibility of the owner or operator of a multifamily residential premises to establish an appropriate system for the separation and separate storage, collection, and disposal of recyclable materials consistent with recycling market requirements and with the requirements of this section. Compliance with the requirements of this section shall be a condition precedent to the issuance of rental inspection certificates for all multifamily residential premises in the city.
- (b) *Bulk containers for storage and collection of materials.* The owner or operator of a multifamily residential premises shall provide or shall arrange for the provision of a sufficient number of bulk containers to store all recyclable materials which are generated by residents and which accumulate in the interval between collection of such materials.
- (c) *Location of bulk containers.* Bulk containers for the storage of recyclable materials may be located on the premises of a multifamily residential premises or on property immediately adjacent thereto, provided that the permission of the owner of such adjacent property is obtained in writing and provided that the proposed location of the bulk containers meets all applicable zoning and planning and design requirements. Bulk containers for the storage of recyclable materials may be located in designated parking stalls for the multifamily residential premises or in the setback or side yard thereof, provided that the owner or operator thereof obtains the permission of the director of the community development department or a ~~variance~~ design alternative, as applicable, therefor if such is required by chapter ~~134-135~~ of this Code. The location of bulk containers for the storage of recyclable materials shall not interfere with private or public sidewalks, walkways, or driveways; with roads, streets, or highways; or with entrances and exits of private or public buildings. The owner or operator of a multifamily residential premises shall ensure that each dwelling unit has reasonable access to all necessary bulk containers.

- (d) *Construction and maintenance specifications for bulk containers.* Bulk containers for the storage of recyclable materials shall be durable, watertight and made of metal or plastic; shall be marked with the recycling symbol or other acceptable markings clearly indicating its intended use for storage of recyclable materials; and shall be acceptable to the director of the community development department. Bulk containers for the storage of recyclable materials shall have lids, if necessary, to avert a public nuisance and protect the marketing quality of recyclable materials. Such lids must remain closed except when recyclable materials are being placed in or removed from the bulk container. Bulk containers for the storage of recyclable materials shall be clearly marked with both the recycling symbol and with the type of material to be deposited in the container. Bulk containers shall remain on the premises at all times. The number of such containers shall be sufficient to handle the volume of recyclables which accumulate between collection intervals. The owner or operator of the multifamily residential premises shall maintain bulk containers in good repair and in a clean and sanitary condition, free of offensive odors and the presence of flies and vermin, and shall maintain the location of such bulk containers free of all litter and spillage of recyclable materials. If one or more of such bulk containers becomes filled with recyclable materials prior to the scheduled collection day, the owner or operator of the multifamily residential premises shall immediately collect and dispose of such materials or shall arrange for the immediate collection and disposal of such materials by its contract waste hauler, all as required in this section.
- (e) *Collection of recyclable materials.* The owner or operator of a multifamily residential premises shall either collect and dispose of recyclable materials as provided in this section or shall contract with a waste hauler, licensed pursuant to sections 98-62 through 98-67 of division 2 of this article, for the collection and disposal of recyclable materials from the bulk storage containers located on the premises. If the owner or operator of the multifamily residential premises determines that he or she will not collect and dispose of recyclable materials generated at the premises, such owner or operator shall contract with a private waste hauler, licensed as provided in sections 98-62 through 98-67 of division 2 of this article, for the provision of such service. In that event, the owner or operator shall provide a copy of the contract with the private waste hauler to the city and shall promptly advise the city of any cessation of such service by the private waste hauler. When a private waste hauler provides solid waste collection services to a multifamily residential premises, the bulk containers for the storage of recyclable materials shall be located on such premises at a location agreed upon by the owner or operator of the premises and the private waste hauler.
- (f) *Disposal of recyclable materials.* The owner or operator of multifamily residential premises or his or her authorized waste haulers shall provide for the disposal of recyclable materials at a qualified recycling facility approved for that purpose by the director of community development.
- (g) *Enforcement.* This section shall be enforced by the community development department as part of its rental inspection program, and housing inspectors are authorized to inspect all multifamily residential premises for compliance with this section. Upon application of the owner or operator of a multifamily residential premises not exceeding ten units in size, showing inability to comply with the bulk container location requirements of this section due to lack of space for bulk containers and inability to obtain an off-site location therefor, the director of the community development department is authorized to waive the

requirements of this section. Failure to comply with this section shall be grounds for denial or revocation of a rental inspection certificate, pursuant to the procedures set forth in article IV of chapter 26 of this Code.

## **CHAPTER 102 STREETS, SIDEWALKS, SKYWALKS AND OTHER PUBLIC PLACES\***

### **Sec. 102-191. Conform to specifications.**

No street or alley which shall be dedicated to public use by any proprietor of ground in the city shall be deemed a public street or alley or under the use or control of the city council nor shall such streets or alleys be in any manner bladed, improved or repaired unless the streets or alleys shall conform to the regular width of the streets or alleys designated by the city council, after recommendation by the community development director or the city plan and zoning commission as applicable pursuant to chapter 135 of this code, for that area and unless such streets or alleys shall first be brought to such grade as shall be recommended by the city engineer and adopted by the city council. No street or alley dedicated to public use shall be deemed a public street or alley nor under the use or control of the city council, unless it has been accepted by resolution of the city council or by adoption by the city council of an acknowledged plat containing the street or alley.

### **Sec. 102-359. Application to construct.**

Prior to the construction or emplacement of any driveway approach, any person having a vested interest in the parcel of land to which the approach will run or the person who is to perform the work incident to the construction or emplacement of the driveway approach shall file an application in the office of the building official. The application shall contain the following information:

- (1) The name of the owner of the parcel of land to which the proposed driveway approach will run.
- (2) The name of the applicant, if the application is made by a person other than the owner of the parcel of land to which the approach will run.
- (3) The location of the parcel of land, legal description, or other means of specific identification.
- (4) The type of materials to be used in the construction or replacement thereof.
- (5) The name and address of the contractor or other person who is to undertake the work incident to the construction or replacement of the driveway approach.
- (6) Attached to or as a part of the application, a plat showing the parcel of land, the location and the nature of parking or driveway improvements upon the land and the proposed location and design of the driveway approach and curb drop showing its proposed dimensions and design. All plats for commercial driveway approaches shall contain either the written approval of the city engineer or that of the building official issued during a site plan review pursuant to article V-9 of chapter 82-135 of this Code.
- (7) Other information as may be deemed necessary by the building official or the city engineer.

**Sec. 102-379. Alleys.**

- (a) In general the requirements for driveway approaches to alleys shall conform to the requirements for streets; however, variations may be considered on an individual basis by the city engineer.
- (b) Nothing in this article shall preclude perpendicular or angle parking adjacent to an alley, provided that no portion of a parked vehicle shall encroach upon the alley width and provided that sufficient space behind each stall, inclusive of the alley width, is available for vehicle maneuvering in accordance with the requirements of ~~section 134-1377~~ article 6 of chapter 135 of this Code behind each stall, inclusive of the alley width.

**Sec. 102-608. Special restrictions for newsracks and trash containers.**

- (a) In addition to the general regulations set forth in this article, newsracks and trash containers on public property are subject to this section; provided, however, that newsracks within the skywalk system are subject to section 102-609 of this article and are exempt from this section.
- (b) No newsrack shall be located:
  - (1) Within five feet of any fire hydrant, fire or police alarm box, or other emergency facility.
  - (2) Within two feet of any marked crosswalk or any driveway.
  - (3) Where it restricts access to a bus shelter or a bus bench.
  - (4) Where it interferes with loading or unloading at the front and rear doors of buses.
  - (5) On any handicap access ramp.
  - (6) In such a manner as to reduce the clear space for the passageway of pedestrians on sidewalks to a continuous and unobstructed width of less than six feet.
  - (7) On the right-of-way of any street where parking is prohibited on both sides for all or any portion of the day or within 50 feet of such street on the right-of-way of any intersecting street, except that this shall not apply to ~~C-3 central business district~~ DX1, DX2, or DXR commercial district zoned areas.
- (c) Newsracks on public street rights-of-way shall only be placed either:
  - (1) Not more than one foot back from the face of the curb;
  - (2) Not more than six inches from a public utility pole or a traffic sign pole located near the curb; or
  - (3) Parallel to the wall of a building and not more than six inches from the wall.Newsracks placed near the curb shall be placed so that the opening through which newspapers or news periodicals are dispensed does not face the curbline.
- (d) No newsrack shall exceed five feet in height or two feet in depth. The maximum width of a newsrack shall be computed by multiplying by 2 1/2 feet the number of laterally installed vending compartments, which number shall not include vending compartments installed on top of other such compartments.
- (e) A licensed newsrack may be moved to a new site without the requirement of a new application and fee, provided that a site plan showing the exact new location is filed with the city engineer no later than the next business day of the city after the move and provided

that the placement of the newsrack at the new site is in compliance with this article and any other applicable legal requirements.

- (f) No privately owned trash container shall be located on a public street right-of-way, other than alleys, except for those containers required to facilitate solid waste collection from residential premises by the city pursuant to sections 98-51 through 98-58, inclusive, of this Code.
- (g) All privately owned newsracks and trash containers on public property, except within the city skywalk system, shall display a valid areaway permit license, issued by the engineering department.
- (h) It shall be the responsibility of the owner/user of the newsrack/trash container to affix the areaway permit license to the newsrack/trash container so that it is clearly visible for inspection.
- (i) The location of placement of the areaway permit license on the newsrack/trash container shall be determined by the city engineer.
- (j) It shall be the responsibility of the owner/user of any newsrack/trash container placed on public property to maintain an accurate up-to-date listing with the city engineer of the locations at which each such newsrack/trash container is placed.

**Sec. 102-1010. Denial of house moving permit.**

- (a) When, in the judgment of the city engineer or the director of public works, the proposed work will result in an undue hazard to traffic or undue damage to streets, avenues, boulevards, thoroughfares, highways, curbs, sidewalks, trees or other public or private property, the house moving permit shall be denied and the reasons therefor endorsed upon the application. In the review process, the preservation of the urban forest, and the preservation of historically and/or architecturally significant houses shall be given strong consideration.
- (b) The permit shall also be denied if the structure will not comply with pertinent sections of this Code or city ordinances or state laws relating to electrical and plumbing requirements of new structures, unless the owner has obtained a building permit to correct the violations, or if the power, gas, telephone or cable company refuses to consent to the operations or if the structure will not comply with the zoning or the planning and design requirements affecting the proposed location.

**ARTICLE VIII. STOPPING, STANDING AND PARKING\***

**Sec. 114-361.02. Illegal off-street parking.**

- (a) No person shall drive, stop, stand, or park a vehicle onto or upon privately owned property or an area developed as an off-street parking facility, without the consent of the owner, lessee or person in charge of the privately owned property or facility. If a parking permit is issued by the property owner to the lessee, it must be displayed. A violation of this section shall place such vehicle in the status of an illegally parked vehicle and, upon complaint of the owner, lessee or person in charge of the privately owned property or facility, the vehicle may be dealt with pursuant to section 114-485.01 and/or 114-485.11 of this chapter.

19-1150  
49D

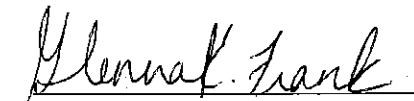
- (b) No person shall park a vehicle in violation of the ~~front yard parking~~ provisions in subsection ~~134-1377(m)~~ 135-6.6 of this Code.
- (c) ~~No person shall park a vehicle a vehicle in violation of the site plan parking provisions in subsection 82-219(b) of this Code~~ Reserved.
- (d) No person shall park a car in a publicly owned parking space developed as a parking space for an electric vehicle charging station without actively charging their vehicle (by conductive or inductive means).
  - (1) Parking spaces for electric vehicle charging stations that are controlled by parking meters shall require the user to insert payment in accordance with the parking meter rates defined in Section 114-643.
- (e) A person who violates any provisions of this section shall pay a fine of \$40.00.

**Sec. 114-632. Residential districts.**

- (a) No person shall park a motor truck having a freight capacity greater than one ton or any trailer, semitrailer, tractor, road tractor or truck tractor unit at any time upon any portion of a street abutting property zoned ~~R-1, R-2, R-3, or R-4~~ N-1 to N-5 or NX1 to NX3 occupancy, as defined in chapter 134 of this Code.
- (b) A person who violates any provision of this section shall pay a fine of \$15.00.

Section 2. This ordinance shall be in full force and effect on December 15, 2019.

FORM APPROVED:

  
Glenna K. Frank  
Assistant City Attorney