No Change from Previous Reading

CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: April 20, 2020

ITEM: Amendment to City Code - Amend Title 9, "Zoning", Chapter 3 "General Zoning Provisions" by exempting from general zoning regulations City improvements which promote the public health, safety and welfare - City Initiated - AO-0045657-2020

ORDINANCE: Approval of the second reading, waive third reading and adopt the ordinance in final form

FINANCIAL IMPACT: None

SYNOPSIS: Title 9 of the West Des Moines Code of Ordinances sets forth the zoning rules and regulations of the City. These rules provide for the orderly and efficient development of the City while protecting the health, safety and welfare of the community. Although the City abides by the zoning code, there are particular projects it undertakes that are unique to a municipality and which are necessary and/or appropriate for the convenience or welfare of its citizens. In such circumstances compliance with the zoning code is not always possible. Examples include the construction of City identification signs in public rights-of-way that do not meet setback requirements, the placement of a satellite library kiosk on or near a public walkway, or the placement of antennas to provide public wi-fi that exceed height regulations.

The proposed Ordinance exempts the City from the zoning code for improvements it undertakes if the City Council determines, on balance, that the benefit of the improvement in the promotion of the health, safety and welfare of the community is greater than the burden created by exempting the improvement from the zoning code. In making the determination, the ordinance requires the City Council to consider the purpose of the improvement, whether there is any feasible alternative to the improvement, and the potential detriment to affected landowners from the improvement. Other factors the Council finds relevant may also be considered.

It is anticipated that this Ordinance will be used sparingly but will be necessary as more municipal projects are undertaken.

Plan and Zoning Commission Action:
Vote: 6-0 approval, Commissioner Erickson absent
Date: March 23, 2020
Motion: Adopt a resolution recommending the City Council approve the amendment to City Code

OUTSTANDING ISSUES: There are no outstanding issues. The following items of interest are noted in the attached Plan and Zoning Commission report (see Exhibit I):

- Applicant's Request
- City Council Subcommittee *(October 15, 2018)*
- Staff Review and Comments
- Noticing Information
- Staff Recommendation and Conditions of Approval

RECOMMENDATION: Approval of the second reading, waive third reading and adopt the ordinance in final form

Lead Staff Member: **Richard J. Scieszinski, City Attorney**

STAFF REVIEWS:

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Date(s) Published	March 20, 2020
Letter sent to surrounding property owners	N/A

SUBCOMMITTEE REVIEW (if applicable)

Committee	Development & Planning		
Date Reviewed	October 15, 2018		
Recommendation	Yes ☒	No ☐	Split ☐

Attachments:

Exhibit I - Proposed Ordinance Amendment

Prepared by: R. Scieszinski, Legal Dept., PO Box 65320 West Des Moines IA 50265-0320 (515) 222-3523
When Recorded, Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, IA 50265-0320

ORDINANCE NO._____

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2019, BY AMENDING TITLE 9, "ZONING", CHAPTER 3, "GENERAL ZONING PROVISIONS", SECTION 3, "SCOPE: MODIFICATIONS AND EXCEPTIONS", SUBSECTION D, "EXCEPTIONS AND MODIFICATIONS", SUBPART "g. IMPROVEMENTS UNDERTAKEN BY THE CITY"

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

SECTION 1: Title 9, "Zoning", Chapter 3, "General Zoning Provisions", Section 3, "Scope: "Modifications and Exceptions", Subsection D, "Exceptions and Modifications" is hereby amended by adding Subpart "g" and the following underlined text:

9-3-3: SCOPE: MODIFICATIONS AND EXCEPTIONS:

D. Exceptions and Modifications:

1. Exceptions and Modifications Enumerated: The regulations specified in this title shall be subject to the following exceptions and interpretations:

   g. Improvements Undertaken by the City:

   Improvements undertaken by the City which the City Council determines serve a legitimate public purpose but which may be contrary to or deviate from City zoning regulations shall be exempt from the requirements of the West Des Moines Code of Ordinances. In making its determination, the City Council shall consider:

   whether the improvement is necessary or appropriate for the convenience, service or welfare of the general public;

   whether there is a feasible alternative for the improvement, considering size, location or other relevant characteristics of the improvement;

   the extent to which the improvement is detrimental to adjoining or affected landowners or residents.

The City Council shall weigh these and any other factors it determines relevant and grant the exemption if it determines that, on balance, the benefit of the improvement to the health, safety and welfare of the community is greater than the burden created by exempting the improvement from the Code of Ordinances.

SECTION 2. REPEALER. All Ordinances or parts of Ordinances in conflict with the provision of this Ordinance are hereby repealed.

SECTION 3. SAVINGS CLAUSE. If any section, provision, sentence, clause, phrase, or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase, or part hereof not adjudged invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, adoption, and publication as required by law.

PASSED AND APPROVED this _____ day of April, 2020.

_____
Steven K. Gaer, Mayor

ATTEST:

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Ryan T. Jacobson, City Clerk