CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

Date: December 7, 2020

ITEM: Amendment to City Code –Title 9, Zoning, Chapter 3, General Zoning Provisions, to define exceptions to building height regulations for portions of the building not intended for occupancy – City Initiated AO-004908-2020

ORDINANCE: Approval of First Reading of Ordinance

FINANCIAL IMPACT: Undetermined.

BACKGROUND: City Staff is requesting an amendment to City Code: Title 9, "*Zoning*", Chapter 3, "*General Zoning Provisions*", Section 3, "*Scope; Modifications and Exceptions*", Subsection D1b, "*Structures Permitted Above Height Limit*".

Current building height regulations in our zoning ordinance do not provide for building elements to exceed the stated building height except for very limited allowances for institutional uses (public service buildings, hospitals, schools).

Several recent redevelopment proposals have "bumped" into our building height restrictions for functional aspects such as elevator shafts. In working with the design teams for these projects, City staff realized that without exceptions to the building height regulations, full utilization of the allowed building height for useable space (dwellings, offices and retail space) could be impacted and strategies to enhance and add interest to a building design may be limited. In response, Staff is proposing several modifications to City code to provide reasonable exceptions to our height regulations. To keep these building elements from becoming so large that the building appears to be taller than allowed, the exceptions will only apply to elements not intended for occupancy. Service areas such as mechanical penthouses or elevator shafts will be limited in height and distanced from the building edge. Decorative elements such as a clock tower or spire will be limited in height and to a percentage of the building façade or roof area.

The proposed exceptions to the building height regulations were forwarded to design professionals that have worked on projects within the City for review and comment. All responses received were very supportive of the changes and any feedback on the specifics of the regulations were incorporated in the final version of the amendment.

Plan and Zoning Commission Action:
Vote: 6-0 for approval, with Commissioner Drake absent.
Date: November 23, 2020
Motion: Adopt a resolution recommending the City Council approve the proposed 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):

- Request
- City Council Subcommittee - *Development & Planning*: *November 2, 2020*
- Staff Review and Comments
- Noticing Information
- Staff Recommendations and Conditions of Approval

RECOMMENDATION: Based upon the preceding review and a finding of consistency with the goals and policies of the Comprehensive Plan, the Plan and Zoning Commission recommends the City Council approve the Amendment to City Code.

Lead Staff Member: Linda Schemmel, AIA

Staff Reviews:

Department Director	*LT*
Appropriations/Finance	
Legal	*JDS*
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Date(s) Published	November 18, 2020
Letter sent to surrounding property owners	N/A

SUBCOMMITTEE REVIEW (if applicable)

Committee	Development & Planning		
Date Reviewed	November 2, 2020		
Recommendation	Yes ☒	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Plan and Zoning Commission Communication
- Attachment A - Plan & Zoning Commission Resolution
  - Exhibit A - Conditions of Approval
- Attachment B - Proposed Ordinance (Moved to Exhibit II)

Exhibit II - Proposed Ordinance

EXHIBIT I

CITY OF WEST DES MOINES
PLAN AND ZONING COMMISSION COMMUNICATION

Meeting Date: November 23, 2020

Item: Amendment to City Code –Title 9, *Zoning*, Chapter 3, *General Zoning Provisions*, to define exceptions to building height regulations for portions of the building not intended for occupancy – City Initiated (AO-004908-2020)

Requested Action: Recommend Approval of Amendment to City Code

Case Advisor: Linda Schemmel, AIA

Applicant's Request: City Staff requests an amendment to City Code, Title 9, "*Zoning*", Chapter 3 "*General Zoning Provisions*", Section 3, "*Scope, Modifications and Exceptions*", Subsection D1b, "*Structures Permitted Above Height Limit*".

Current building height regulations in our zoning ordinance do not provide for building elements to exceed the stated building height except for very limited allowances for institutional uses (public service buildings, hospitals, schools).

Several recent redevelopment proposals have "bumped" into our building height restrictions for functional aspects such as elevator shafts. In working with the design teams for these projects, City staff realized that without exceptions to the building height regulations, full utilization of the allowed building height for useable space (dwellings, offices and retail space) could be impacted and strategies to enhance and add interest to a building design may be limited. In response, Staff is proposing several modifications to City code to provide reasonable exceptions to our height regulations. To keep these building elements from becoming so large that the building appears to be taller than allowed, the exceptions will only apply to elements not intended for occupancy. Service areas such as mechanical penthouses or elevator shafts will be limited in height and distance from the building edge. Decorative elements such as a clock tower or spire will be limited in height and to a percentage of the building façade or roof area.

The proposed exceptions to the building height regulations were forwarded to design professionals that have worked on projects within the City for review and comment. All responses received were very supportive of the changes and any feedback on the specifics of the regulations were incorporated in the final version of the amendment.

City Council Subcommittee: This item was presented to the Development & Planning City Council Subcommittee at their November 2, 2020 meeting as an informational item only. No discussion was had and no disagreement with the proposal was expressed.

Staff Review and Comment: There are no outstanding issues. Staff would note that this amended ordinance will apply to all areas and all zoning districts, except single family residential zones within the City.

Noticing Information: On November 18, 2020, notice for the November 23, 2020, Plan and Zoning Commission and December 7, 2020, City Council Public Hearings on this project was published in the Des Moines Register.

Staff Recommendation and Conditions of Approval: Based upon the preceding review and a finding of consistency with the goals and policies of the Comprehensive Plan, staff recommends the Plan and Zoning Commission adopt a resolution recommending the City Council approve the amendment to City Code Title 9, "*Zoning*", Chapter 3 "*General Zoning Provisions*", Section 3, "*Scope, Modifications and Exceptions*", Subsection D1b, "*Structures Permitted Above Height Limit*" to allow for limited exceptions to building height regulations.

ATTACHMENTS:

Attachment A -	Plan and Zoning Commission Resolution
Exhibit A	- Conditions of Approval
Attachment B -	Proposed Ordinance Amendment

ATTACHMENT A

RESOLUTION NO. PZC–20-081

A RESOLUTION OF THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES, IOWA, RECOMMENDING TO THE CITY COUNCIL THAT IT APPROVE AN AMENDMENT TO CITY CODE TITLE 9, "ZONING", CHAPTER 3 "GENERAL ZONING PROVISIONS" TO ALLOW FOR LIMITED EXCEPTIONS TO BUILDING HEIGHT REGULATIONS

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, City Staff requests an amendment to City Code, Title 9, "Zoning", Chapter 3 "General Zoning Provisions", Section 3, "Scope, Modifications and Exceptions", Subsection D1b, "Structures Permitted Above Height Limit" to allow for limited exceptions to building height regulations; and

WHEREAS, studies and investigations were made, and staff reports and recommendations were submitted which are made a part of this record and herein incorporated by reference; and

WHEREAS, on November 23, 2020, this Commission held a duly-noticed hearing to consider the Amendment to City Code (AO-004908-2020).

NOW, THEREFORE, THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

SECTION 1. The findings, for approval, in the staff report, dated November 23, 2020, or as amended orally at the Plan and Zoning Commission hearing of November 23, 2020, are adopted.

SECTION 2. The AMENDMENT TO CITY CODE (AO-004908-2020) to amend City Code Title 9, "Zoning", Chapter 3 "General Zoning Provisions", Section 3, "Scope, Modifications and Exceptions", Subsection D 1 b, "Structures Permitted Above Height Limit" to allow for limited exceptions to building height regulations is recommended to the City Council for approval, subject to compliance with all the conditions in the staff report, dated November 23, 2020, including conditions added at the meeting, and attached hereto as Exhibit "A". Violation of any such conditions shall be grounds for revocation of the permit, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on November 23, 2020.

Erica Andersen

Erica Andersen, Chair
Plan and Zoning Commission

ATTEST:

Jennifer Canaday

Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on November 23, 2020, by the following vote:

AYES: Andersen, Conlin, Costa, Crowley, Hatfield, Southworth
NAYS:
ABSTENTIONS:
ABSENT: Drake

ATTEST: Jennifer Canaday
Recording Secretary

Exhibit A
Conditions of Approval
None

ATTACHMENT B

Prepared by: L. Schemmel, West Des Moines Development Services, PO Box 65320, West Des Moines, IA 50265, 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO 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" TO ALLOW FOR LIMITED EXCEPTIONS TO BUILDING HEIGHT REGULATIONS

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

SECTION 1. Amendment. Title 9, "Zoning", Chapter 3 "General Zoning Provisions", Section 3, "Scope; Modifications and Exceptions", Subsection D1b, "Structures Permitted Above Height Limit" is hereby amended by deleting the strikeout highlighted text and adding the bold italic text

b. Structures Permitted Above Height Limit: The building height limitations ***related to non-single-family residential zoning districts*** of this title shall be modified as follows:

~~(1) Chimneys, cooling towers, elevator bulkheads, fire towers, monuments, penthouses, stacks, stage towers or scenery lofts, tanks, water towers, ornamental towers and spires, radio or television towers or necessary mechanical appurtenances may be erected to a height in accordance with existing or hereafter adopted ordinances of the city.~~

(1) Operational elements of a building not intended for occupancy such as mechanical penthouses, elevator shafts, stair towers, stage towers or scenery lofts, may exceed the building height limits as provided in Chapter 7 of this title as noted below, however no element shall exceed twelve feet (12') above the measured height of the building.

(A) Elements up to six feet (6') may be allowed with no setback from any roof edge

(B) Elements exceeding six feet (6'), but no higher than twelve feet (12') may be allowed if set back from any roof edge one foot (1') for each foot of height above the height limit

(C) Any element that does not conform with the exceptions noted in subsection D.1.b(1), may be approved by the Director of Development Services if it's shown that without the requested exception, strict compliance with the ordinance results in a practical difficulty. A "practical difficulty" may be shown by:

(i) Significant or unjustified expense in light of the scope of the project;
(ii) Destruction or demolition of significant or attractive features of the structure, or similar reasons;
(iii) Inability to achieve compliance with adopted building, fire or life safety regulations;
(iv) Orientation or interior configuration of the structure which impacts the logical function of the intended improvement unless additional modifications are made to the layout or use of the existing or proposed structure.

(2) Decorative architectural elements not intended for occupancy such as towers, dormers, cupolas, spires, domes, etc. may exceed the building height limits as provided in Chapter 7 of this title as noted below, however no element shall exceed twelve foot (12') above the measured height of the building.

(A) Decorative elements may be allowed up to twelve feet (12') above the building height limit.

(B) The total of all decorative elements that exceed the building height limit are restricted to no more than five percent (5%) of the total façade length when located at or within six feet (6') of the roof edge. Decorative elements that exceed the building height that are located more than six feet (6') from the roof edge are limited to five percent (5%) of the total roof area.

(C) Any element that does not conform with the exceptions noted in subsection b(2), may be approved by the Director of Development Services if it's shown that without the requested exception, strict compliance with the ordinance results in a practical difficulty. A "practical difficulty" may be shown by:

(i) Significant or unjustified expense in light of the scope of the project;
(ii) Destruction or demolition of significant or attractive features of the structure, or similar reasons;
(iii) Inability to achieve compliance with adopted building, fire or life safety regulations;
(iv) Orientation or interior configuration of the structure which impacts the logical function of the intended improvement unless additional modifications are made to the layout or use of the existing or proposed structure.

~~(2)~~ ***(3)*** Public, semipublic or public service buildings, hospitals, sanatoriums or schools, when permitted in a district, may be erected to a height not exceeding sixty feet (60'), and churches and temples, when permitted in a district, may be erected to a height not exceeding seventy five feet (75') if the building is set back from each property line at least one foot (1') for each foot of additional building height above the height limit otherwise provided in the district in which the building is built.

(4) The exceptions noted above do not apply to building mounted equipment for communication antennas, towers and flag poles. Those elements must

follow the height limit provisions for the respective equipment as noted in Title 9.

(5) Building mounted renewable energy generation equipment may exceed the building height limitations but must still meet the specific height limit provisions for the equipment as noted in Title 9, Chapter 14.

~~(3)~~ ***(6)*** The height of any building, tower, sign or any attachment to any structure shall not exceed maximum elevations as delineated within chapter 13 of this title and prescribed for each airport hazard and height (overlay) zone unless a variance is granted through proper procedures as specified in this title.

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 the 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. VIOLATIONS AND PENALTIES. Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in Title 1, Chapter 4, Section 1 of the City Code of the City of West Des Moines, Iowa.

SECTION 5. OTHER REMEDIES. In addition to the provisions set out in the Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

SECTION 6. EFFECTIVE DATE. This Ordinance shall be in full force and effect after its passage, approval and publication as provided by law.

Passed by the City Council on the _____ day of _____, 2020, and approved this _____day of _____, 2020.

_____
Steve Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk

I certify that the foregoing was published as Ordinance No. _____ on the _____ day of _____ _____, 2020.

_____
Ryan Jacobson, City Clerk