NO CHANGES FROM PREVIOUS READING

CITY OF WEST DES MOINES
STAFF REPORT COMMUNICATION

Meeting Date: October 4, 2021

ITEM: Ordinance Amendment, Amend Title 9 (Zoning) to modify regulations pertaining to Penalties, Fences, and Canopies - City Initiated – AO-005291-2021

ORDINANCE: Approval of Second Reading, Waive Third and Adopt Ordinance Amendment

Background: Development Services Staff is initiating an amendment to the chapters and sections identified below in Title 9 (Zoning) to modify certain regulations as currently stated within City Code. Specifically, the following changes are proposed with this request:

- Title 9: Zoning
  - Chapter 1: *Entitlements, Process and Procedures*, Section 16: *Penalties*, to refer to penalties as provided in Title 1, Administration Section 4-2 Municipal Infractions.
  - Chapter 10: *Performance Standards*, Section 4-A: *Specific Use Regulations* to add design standards for canopy structures to this section (remove from Chapter 14).
  - Chapter 14: *Accessory Structures*, Section 9: *Fuel Pump Islands and Island Canopies* to relocate design regulations to Chapter 10 *Performance Standards* and expand design regulations to apply to all types of canopies.
  - Chapter 14: *Accessory Structures*, Section 11: *Fences* to provide a provision allowing regulation of fence height in accordance with federal, state or local regulations or for reasons of public safety.
  - Chapter 14: *Accessory Structures*, Section 12: *Walls* to provide a provision allowing regulation of wall height in accordance with federal, state or local regulations or for reasons of public safety.

Staff Review & Comment:

- *Key Aspects of Proposed Amendment:*
  - *Penalties:* Title 9, *Zoning*, of city code has a provision for the assessment of penalties for noncompliance with the code (Municipal Infractions) that has not kept current with the Municipal Infraction penalty dollar amount identified in Title 1, *Administration*. For consistency, the proposed amendment would refer to the penalty allowance stated in Title 1 for *Municipal Infractions*.
  - *Canopies:* Title 9, *Zoning*, Chapter 14, *Accessory Structures* addresses the design and materials to be used in the construction of fuel pump canopies. Staff proposes to move the design regulations aspect only to Chapter 10, *Performance Standards*, and to expand the application of the design standards to apply to all types of canopies. The expansion beyond just fuel island canopies will allow for consistency in applying to other canopies such as restaurant drive-throughs and online ordering pickup. Regulations for fuel pumps and fuel island canopies for

setback, height, signage, lighting and maximum number of fuel pumps allowed will remain in Chapter 14, *Accessory Structures*.

- *Fences:* Recently, an amendment to Title 5, *Police Regulations* was approved by the City Council that allows for an increased height in fences if determined in the best interest of public safety. The Title 5 amendment stemmed from the need to ensure a dog in quarantine for a bite incident could not jump the animal shelter's fence. In another recent situation, the electric code required a fence surrounding a ground solar array to be taller than what was allowed in City Code for the zoning district. The proposed amendment in Title 9, *Zoning*, Chapter 14, *Accessory Structures*, will align Title 9 with Title 5 in allowing taller fences in situations that have been determined to need such for the health, safety, and welfare of the community. Additionally, the proposed amendment will provide a path to allow fence heights to comply with federal, state, and local codes.
- *Walls:* The proposed amendment for walls in Title 9, *Zoning*, Chapter 14, *Accessory Structures*, applies the same allowance for fences as stated in the previous bullet to walls. An example of public safety need would be wall height surrounding electrical substations.

Outstanding Issues: There are no outstanding issues.

Plan and Zoning Commission Action:

Date:	September 13, 2021
Vote:	5-1-1, Commissioner Drake Absent, Commissioner Conlin nay.
Recommendation:	Approval of the Ordinance

Commissioner Conlin indicated that he disagreed with regulation of canopies, noting that he appreciated the proactive approach by staff, but considered the provision a solution looking for a problem.

City Council First Reading:

Date:	September 20, 2021
Vote:	5-0, for Approval First Reading

Recommendation: Approve the Ordinance Amendment to City Code.

Lead Staff Member: Kara V. Tragesser, AICP

Approval Meeting Dates:

Plan & Zoning Commission	September 13, 2021
City Council: First Reading	September 20, 2021
City Council: Second Reading, Waive Third and Adopt	October 4, 2021
City Council: Third Reading	

Staff Report Reviews

Plan & Zoning Commission	☒ Development Coordinator/Director	☒ Legal Department
City Council	☒ Director	☒ Legal Department
	☐ Appropriations/Finance	☑ Agenda Acceptance

Publications

Published In	Des Moines Register Community Section
Date Published	September 3, 2021

Subcommittee Review (if applicable)

Committee	Development & Planning		
Date Reviewed	August 16, 2021		
Recommendation	☒ Yes	☐ No	☐ Split

A RESOLUTION OF THE PLAN AND ZONING COMMISSION
NO. PZC-21-077

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, Development Services staff requests approval of an Ordinance Amendment to the following chapters and sections identified below in Title 9 (Zoning) to modify certain regulations as currently stated within City Code.

- Title 9: Zoning
  - Chapter 1: *Entitlements, Process and Procedures*, Section 16: *Penalties*, to refer to penalties as identified in Title 1, Administration Section 4-2 Municipal Infractions.
  - Chapter 10: *Performance Standards*, Section 4-A: *Specific Use Regulations* to add design standards for canopy structures to this section (remove from Chapter 14).
  - Chapter 14: *Accessory Structures*, Section 9: *Fuel Pump Islands and Island Canopies* to relocate design regulations to Chapter 10 *Performance Standards* and expand design regulations to apply to all types of canopies.
  - Chapter 14: *Accessory Structures*, Section 11: *Fences* to provide a provision allowing regulation of fence height in accordance with federal, state or local regulations or for reasons of public safety.
  - Chapter 14: *Accessory Structures*, Section 12: *Walls* to provide a provision allowing regulation of wall height in accordance with federal, state or local regulations or for reasons of public safety.

WHEREAS, the Ordinance Amendment request complies with the applicable provisions of Iowa Code Chapter 414, the Comprehensive Plan and City Code.

NOW THEREFORE, the Plan and Zoning Commission of the City of West Des Moines recommends the City Council approve the Ordinance Amendment (AO-005291-2021).

PASSED AND ADOPTED on September 13, 2021.

Erica Andersen

Erica Andersen, Chair
Plan and Zoning Commission

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 September 13, 2021, by the following vote:

AYES: Andersen, Costa, Crowley, Davis, Hatfield

NAYS: Conlin

ABSTENTIONS:

ABSENT: Drake

ATTEST:

Recording Secretary

Prepared by: K, Tragesser, City of West Des Moines, Development Services Dept., P.O. Box 65320, West Des Moines, IA 50265-3620, 515-222-3620
When Recorded Return to: City Clerk, City of West Des Moines, P.). 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 1, "ENTITLEMENTS - PROCESS AND PROCEDURES", CHAPTER 10, "PERFORMANCE STANDARDS", AND CHAPTER 14, "ACCESSORY STRUCTURES"

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

SECTION 1: AMENDMENT. Title 9, "*Zoning*", Chapter 1, "*Entitlements – Process and Procedures*", Section 16, "*Penalties*", is hereby amended by deleting the text in its entirety and replacing with the following:

> ***16: Penalties: Any person who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this title, upon conviction, shall be subject to the general penalty provisions stated in City Code, Title 1, Section 4, Municipal Infractions. If the City seeks court intervention for violation of any provision of this title, the City may seek reimbursement for reasonable attorney fees and administrative costs. Each day that a violation occurs shall constitute a separate offense.***

SECTION 2: AMENDMENT. Title 9, "*Zoning*", Chapter 10, "*Performance Standards*", Section 4-A, "*Specific Use Regulations" is hereby amended by adding Subsection 29 "Design Standards for Canopies" as follows:*

> ***29. Design Standards for Canopies: For all uses, except single-family residential development, canopies shall comply with the following:***
>
> ***a. For this subsection a canopy is defined as: a projection or shelter that resembles a roof and is permanent in nature and intended to provide cover for pedestrian areas and entries, outdoor seating areas, vehicle drop-off areas, and transactional areas such as gas pumps, ATM's, drive-thru order stations and pickup windows, online order pickup, etc.***
> ***b. All structures, either detached or attached to the principal structure, shall be architecturally consistent with the principal structure.***

c. ***The intent of the following design standards is to promote an appealing structure that is architecturally consistent with the principal structure, provides visual interest, and balances the mass of the canopy between the elements of the structure such as the canopy and the support structure. For all canopies the following design elements must be present:***

(1) ***All canopy supports shall be designed to be in proportion with the canopy size and height, and that dimension shall extend the full height of the support. Supports shall be clad with materials consistent with the materials used for the primary structure.***

(A.) ***Canopy supports that are subject to impacts due to vehicle traffic shall be constructed with hard surface durable material such as brick or stone or architectural masonry for a minimum of seven feet (7') above the surrounding paved surface. Less durable hard surface materials such as EIFS and composite materials, if consistent with the primary building, may be utilized for the cladding on the upper portion of the column.***

(2) ***Canopies one hundred (100) linear feet or greater in length shall be designed to provide visual interest and break the straight line appearance of the length of the canopy by utilizing changes in massing and materials.***

(3) ***The color of the canopy shall be consistent with the color of the materials used to construct the primary structure. The color shall not be consistent with the signage colors unless considered part of the primary structure's signage allowance as noted elsewhere in this title.***

SECTION 3: <u>AMENDMENT</u>. Title 9, "*Zoning*", Chapter 14, "Accessory Structures", Section 9, "*Fuel Pump Islands and Island Canopies*" is hereby modified by deleting Subsection F. *Design Standards for Fuel Pump Island Canopies*" in its entirety and replacing with the following:

F. Design Standards for Fuel Pump Island Canopies are found in Title 9, "Zoning", Chapter 10, "Performance Standards", Section 4-A, "Specific Use Regulations", Subsection 29.

SECTION 4: <u>AMENDMENT</u>. Title 9, "*Zoning*", Chapter 14, "*Accessory Structures*", Section 11, "*Fences*" is hereby amended to add Subsection D as follows:

D. Other Regulations: Fences not normally allowed or a fence height above what is permitted for the specific zoning district may be allowed as noted below. Fence design and materials shall comply with the requirements otherwise contained in this section.

1. ***Additional fence height required by federal, state, or local regulations shall be allowed to exceed the maximum fence height noted for the zoning district up to the minimum height required per the applicable regulation.***
2. ***Additional fence height needed to protect the public health, safety, and welfare shall be allowed to exceed the maximum fence height noted for the zoning district upon demonstrating to the Development Services***

Director, or designee, that the additional height is necessary to protect public safety. Fence height will be allowed up to the maximum for that district plus up to three (3) additional feet if the additional three feet (3') is no less than eighty percent (80%) transparent above the allowed height.

SECTION 5: <u>AMENDMENT</u>. Title 9, "*Zoning*", Chapter 14, "Accessory Structures", Section 12, "*Walls*" is hereby modified by adding Subsection E as follows:

E. Other Regulations: Walls not normally allowed or a wall height above what is permitted for the specific zoning district may be allowed as noted below. Wall design and materials for these walls shall comply with the requirements otherwise contained in this section.

1. ***Additional wall height required by federal, state, or local regulations shall be allowed to exceed the maximum wall height noted for the zoning district up to the minimum height required per the applicable regulation.***
2. ***Additional wall height needed to protect the public health, safety, and welfare shall be allowed to exceed the maximum wall height noted for the zoning district upon demonstrating to the Development Services Director, or designee, that the additional height is necessary to protect public safety. Wall height will be allowed up to the maximum for that district plus up to three (3) additional feet, if the wall is setback one foot (1') for each additional foot above the maximum height allowed.***

SECTION 6: <u>REPEALER</u>. All ordinances or parts of ordinances in conflict with the provision of this Ordinance are hereby repealed.

SECTION 7: <u>SAVINGS CLAUSE</u>. 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 8: <u>VIOLATIONS AND PENALTIES</u>. 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 9: <u>OTHER REMEDIES</u>. 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 10: <u>EFFECTIVE DATE</u>. This Ordinance shall be in full force and effect after its passage, approval and publication as provided by law.

Passed and approved by the City Council on the 4th day of October 2021.

_____
Steve Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk

I certify that the foregoing was published as Ordinance No. _____ on the _____ day of_____ _____, 2021.

_____
Ryan Jacobson, City Clerk