

## CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

**Meeting Date:** June 13, 2022

**ITEM:** Ordinance Amendment, Amend Title 2 (Boards and Commissions), Title 9 (Zoning) and Title 10 (Subdivision Regulations) to modify or remove inaccurate indications of Planning and Zoning Commission decision and appeal authority of development related applications and matters - City Initiated – AO-005646-2022

### **RESOLUTION: Approval of Ordinance Amendment**

**Background:** Development Services Staff is initiating an amendment to the chapters and sections identified below in Title 2 (Boards and Commissions), Title 9 (Zoning) and Title 10 (Subdivision Regulations) to modify or remove inaccurate indications of Planning and Zoning Commission (“Commission”) authority of development applications as is currently stated within City Code.

Specifically, the following changes are proposed with this request:

- Title 2: Boards and Commissions
  - Chapter 1: *Planning and Zoning Commission*, Section 5: *Powers and Duties*, Subsection G to clarify Commission’s review and recommendation to the City Council is on Preliminary Plats but not a Final Plat.
- Title 9: Zoning
  - Chapter 1: *Entitlements – Process and Procedures*, Section 4: *Authority*, Subsection D to clarify the Permitted Conditional Use (Pc) process as it relates to Commission and City Council review and application of Board assigned conditions of approval.
  - Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements*, Subsection A to confirm the Commission does not grant final approvals or entitlements to develop land.
  - Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements* Subsection A.3.a to clarify the Board of Adjustment grants Permitted Conditional Use (Pc) use approvals but an associated site development permit, if necessary, is acted upon by the City Council after receiving a recommendation from the Planning and Zoning Commission.
  - Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements* Subsection A.4.d to clarify Major Modification site development permits are acted upon by the City Council after receiving a recommendation from the Planning and Zoning Commission.
  - Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements* Subsection A.5.b(4) to clarify Minor Modifications site development permits (that are not approved administratively) may be acted upon by the City Council after receiving a recommendation from the Planning and Zoning Commission.
  - Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements* Subsection A.5.e to clean up the defined process of an appeal of a Minor Modification decision made by the Development Services Director (“Director”).

- Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements* Subsection A.6.b(3) to clarify that if requested, Overlay District Site Plan site development permits are acted upon by the City Council after receiving a recommendation from the Planning and Zoning Commission.
- Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements* Subsection A.6.f to change the appeal process for Director decisions related to an Overlay District Site Plan to the Board of Adjustment and clarify the defined appeal process.
- Chapter 1: *Entitlements – Process and Procedures*, Section 9: *Filing and Processing of Application Requests*: Subsection A-1-f to change the appeal process for Director decision of incomplete development application to the Board of Adjustment and clarify the defined appeal process.
- Chapter 1: *Entitlements – Process and Procedures*, Section 10: *Notice and Hearing Procedures*: Subsection C: *Hearing Quorum* to clarify the Commission quorum is making a recommendation.
- Chapter 1: *Entitlements – Process and Procedures*, Section 10: *Notice and Hearing Procedures*: Subsection F: *Decisions* to remove indication that the Planning and Zoning Commission makes an approval decision on a discretionary item and remove requirements for written notification of said decision.
- Chapter 1: *Entitlements – Process and Procedures*, Section 11: *Modification, Suspension and Revocation for Cause*: Subsection B: *Nonwaiver* to remove indication that the Commission has authority to revoke a development permit approval.
- Chapter 1: *Entitlements – Process and Processes*, Section 14: *Amendments* Subsection A through D to clarify a 'report' equates to a written recommendation of the Commission and remove indication of fees in favor of provision within the City Council's ratification of fees.
- Chapter 3: *General Zoning Provisions*, Section 3: *Scope; Modifications and Exceptions* Subsection D.2 to clarify a 'report' equates to a written recommendation of the Commission as it relates to certain special development uses or projects.
- Chapter 3: *General Zoning Provisions*, Section 3: *Scope; Modifications and Exceptions* Subsection 11.F to clarify deferral of sidewalks as part of new development are acted upon by the City Council after receiving a recommendation from the Planning and Zoning Commission.
- Chapter 9: *Planned Unit Development District*, Section 6: *Review Process*, Subsection D: *Exceptions and Modifications* to clarify a 'report' equates to a written recommendation of the Commission
- Chapter 14: *Accessory Structures*, Section 3: *Interpretations*, to clarify all appeals of Director interpretations or administrative approvals are heard by the Board of Adjustment
- Chapter 15: *Off-Street Parking and Loading*, Section 4: *General Off-Street Parking Regulations*, Subsection 4: *Accessory Uses*: to remove indication that the Commission has jurisdiction in determining parking requirements for accessory uses in a building.
- Title 10: *Subdivision Regulations*
  - Chapter 1: *General Provisions*, Section 5: *Variances and Exceptions*, to remove indication of Commission's authority to waive provisions.

- Chapter 2: *Plats and Procedures*, Section 3: *Final Plat Requirements*, Subsection A to clarify Commission's consideration of Preliminary Plats but not Final Plats.
- Chapter 2: *Plats and Procedures*, Section 3: *Final Plat Requirements*, Subsection C.8 to clarify Commission's consideration of Preliminary Plats but not Final Plats.
- Chapter 3: *Design Standards and Required Improvements*, Section 2: *Improvements*, Subsection A.1.f to remove request process and Commission's consideration of sidewalk deferral as part of Public Improvements associated with a Final Plat.

**Staff Review & Comment:**

- Ordinance Amendment Purpose: It was recently brought to the City's attention that the language in city code specifying the Planning and Zoning Commissions' role and authority of development and land use related plans was unclear which has led to questions on the appeal process. Specifically, city code title 9, chapter 1, section 10, subsection F suggests that the Planning and Zoning Commission has decision or final approval authority. The Planning and Zoning Commission is a recommending body to the City Council with the Council making the final decisions. It is believed that some of the confusion stems from remnant code language after the Commission's decision-making authority over Grading Permits was changed to the City Engineer in February 2018. This was done to expedite grading permit approvals and resulted in the Planning and Zoning Commission becoming solely a recommending body to the Council. This amendment is focused on clarifying code language to reflect the Commission is a recommending body only and the City Council has the authority of making final decisions.
- Final Plats: While reviewing city code for provisions that warranted clarification of the Commission's role, it was noticed that code suggests that the Commission reviews Final Plats. This has not been the city's practice for at least the last 20 years. The Commission does have a review role of Preliminary Plats but does not review Final Plats unless specifically directed to do so by the City Council. The changes to Title 2 and Title 10 modifies language to clarify the Commission's role as it relates to review and recommendation on Preliminary Plats, but not on Final Plats.
- Appeals: City code Title 2, (Boards and Commissions), Chapter 2, (Board of Adjustment), Section 3, (Appeals), Subsection A states: *Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the City affected by any decision of the Director of Community Development, or designee.* It is clear by this provision that appeals of department decisions shall be considered by the Board of Adjustment; however, in various locations of Title 9 there is indication that appeals are to go to the Commission which is counter to the Commission serving as a recommending body only. This amendment proposes language that clarifies appeals of development and land use related matters are heard and decided by the Board of Adjustment.
- Authority over City Code: The Planning and Zoning Commission has been granted the power to provide recommendations to the City Council for amendments to Title 9, Zoning. The Commission does not have authority over what is or is not included in any other title within City Code other than Title 9. The proposed ordinance amendment in its entirety has been provided to the Commission for context; however, the recommendation contained in the resolution will only apply to the changes to Title 9. The Commission can make

suggestions on other titles for the Council to consider; however, the Council has ultimate authority over what is adopted as City Code.

**Outstanding Issues:** There are no outstanding issues.

Planning and Zoning Commission Action:

Date:

Vote:

Recommendation:

City Council First Reading:

Date:

Vote:

**Recommendation:** Approve the Ordinance Amendment to City Code.

**Lead Staff Member:** Lynne Twedt

**Approval Meeting Dates:**

Planning & Zoning Commission	June 13, 2022
City Council: First Reading	
City Council: Second Reading	
City Council: Third Reading	

**Staff Report Reviews**

Planning & Zoning Commission	<input checked="" type="checkbox"/> Development Coordinator	<input checked="" type="checkbox"/> Legal Department
	<input type="checkbox"/> Director	
City Council	<input type="checkbox"/> Director	<input type="checkbox"/> Legal Department
	<input type="checkbox"/> Appropriations/Finance	<input type="checkbox"/> Agenda Acceptance

**Publications**

Published In	Des Moines Register Community Section
Date Published	June 3, 2022

**Subcommittee Review (if applicable)**

Committee	Development & Planning		
Date Reviewed	June 6, 2022		
Recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Split

**A RESOLUTION OF THE PLANNING AND ZONING COMMISSION  
NO. PZC-22-056**

**WHEREAS**, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, staff requests approval of an Ordinance Amendment to the following chapters and sections identified below in Title 9 (Zoning) pertaining to the Planning and Zoning Commissions decision making authority and appeal process as currently provided within City Code and more specifically outlined in the included Ordinance.

- Chapter 1: *Entitlements – Process and Procedures*, Section 4: *Authority*
- Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements*,
- Chapter 1: *Entitlements – Process and Processes*, Section 9: *Filing and Processing of Application Requests*
- Chapter 1: *Entitlements – Process and Processes*, Section 10: *Notice and Hearing Procedure*
- Chapter 1: *Entitlements – Process and Processes*, Section 11: *Modification, Suspension and Revocation for Cause*
- Chapter 1: *Entitlements – Process and Processes*, Section 14: *Amendments*
- Chapter 3: *General Zoning Provisions*, Section 3: *Scope; Modifications and Exceptions*
- Chapter 9: *Planned Unit Development District*, Section 6: *Review Process*
- Chapter 14: *Accessory Structures*, Section 3: *Interpretations*
- Chapter 15: *Off-Street Parking and Loading*, Section 4: *General Off-Street Parking Regulations*

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

**NOW THEREFORE**, the Planning and Zoning Commission of the City of West Des Moines recommends the City Council approve the Ordinance Amendment (AO-005646-2022).

**PASSED AND ADOPTED** on June 13, 2022.

\_\_\_\_\_  
Jennifer Drake, Chair  
Planning and Zoning Commission

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Planning and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on June 13, 2022, by the following vote:

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

ATTEST:

\_\_\_\_\_  
Recording Secretary

Prepared by: L. Twedt, 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.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, TITLE 2 (BOARDS AND COMMISSIONS), CHAPTER 1, AND TITLE 9, (ZONING), CHAPTERS 1, 3, 9, 14 AND 15, AND TITLE 10 (SUBDIVISION REGULATIONS) CHAPTERS 1, 2 AND 3 PERTAINING TO THE PLANNING AND ZONING COMMISSION AUTHORITY OVER DEVELOPMENT APPLICATIONS AND APPEALS

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

**Section 1. Amendment.** Title 2: *Boards and Commissions*, Chapter 1: *Planning and Zoning Commission*, Section 5: *Powers and Duties*, Subsection G: *Review and Comment on Plats* is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

- G. Review And Comment On ***Preliminary*** Plats: All ~~plans, or replats of subdivision or resubdivisions of land embraced in the City or within the extraterritorial review area adjacent thereto, laid out in lots or plats with the streets, alleys or other portions of the same, intended to be dedicated to the public in the City,~~ shall first be submitted to ***considered by*** the commission. ~~and its recommendations obtained before approval by the Council.~~ ***The commission shall, by written resolution, provide a recommendation to the City Council for their consideration in making the approval decision.***

**Section 2. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements – Process and Procedures*, Section 4: *Authority*, Subsection D is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

- D. The Board of Adjustment of the City of West Des Moines, Iowa (hereinafter "Board") may approve, deny or modify, wholly or partly, any application for the use of land, including, permitted conditional use permits (Pc), which may also be subject to approval ***consideration*** of a site plan development permit. ~~for development of land by the~~ ***The Plan Planning and Zoning Commission and shall, by written resolution, provide a recommendation to the City Council for their consideration in making the final decision on the site plan development permit.*** The Board may impose

such conditions and limitations on the use as it deems necessary to assure that the general purpose and intent of this title and all other ordinances or policies enacted or followed by the Board will be observed, and that the public interest, health, safety, convenience and welfare will be served. Conditions placed by the Board shall be enforced by the **Plan Planning** and Zoning Commission and City Council as part of site plan development permit approval *process*. No site plan development permit shall be approved if conditions placed by the Board have not been appropriately accommodated in the development of the site. Conditions placed by the Board as part of the permitted conditional use permit approval may only be modified or removed by the Board. The **Plan Planning** and Zoning Commission and City Council shall not have authority to modify, waive, or remove conditions placed by the Board.

**Section 3. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements*, Subsection A is hereby amended by deleting the highlighted strike-through text. All other items in current adopted portion of code not reflected below shall remain as is.

- A. An "entitlement" shall mean the authority acquired by an applicant after receiving approval of an application from **either the Plan and Zoning Commission,** Board of Adjustment, City Council, Director of Development Services or designee, City Engineer or designee, or other official body of the City. The following subsections define, indicate applicability, and establish requirements for submittal for all entitlements required by this title:

**Section 4. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements*, Subsection A.3.a is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

3. Permitted Conditional Use Permit (Pc)
  - a. Purpose: "Permitted conditional use permit (Pc)" shall mean a zoning instrument used primarily to review the locations or conduct of certain land uses. These are uses which may have a distinct impact on the area in which they are located, or are capable of creating special problems for bordering properties unless given special attention.

The Board of Adjustment may grant a permitted conditional use permit (Pc) if the proposed use is found to be in compliance with the required findings ***from title 2, chapter 2 of this Code; or if conditions and limitations, as the Board of Adjustment deems necessary, are imposed to allow it to make said findings. The permitted conditional use permit (Pc) may also be subject to consideration of a site plan development permit. The Planning and Zoning Commission shall, by written resolution, provide a recommendation to the City Council for their consideration in making the final decision on the site plan development permit.*** ~~and the Plan and Zoning Commission shall recommend and the City Council shall approve the development of any land associated with a permitted conditional use permit (Pc) through the site plan development permit process if the development is found to be in compliance with the required findings and any conditions of the approval placed by the Board on implementation of the use.~~

**Section 5. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements*, Subsection A.4.d is hereby amended by deleting the highlighted strike-



through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

- d. Required Permit Findings: Findings for modifications shall be the same as those required for the original site plan development permit. Any modification to a previously approved site plan for a permitted conditional (Pc) use permit shall be subject to **review consideration** by the **Plan Planning** and Zoning Commission **with recommendation by written resolution to** and ~~approval~~ **final decision** by **the** City Council. Any expansion of a permitted conditional use on the property shall require approval by the Board of Adjustment.

**Section 6. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements*, Subsection A.5.b.(4) is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

- (4) Any modification to a previously approved site plan for a permitted conditional (Pc) use permit approval that does not qualify for the level 1 or the level 2 minor modification process shall be subject to **review consideration** by the **Plan Planning** and Zoning Commission **with recommendation by written resolution to** and ~~approval~~ **final decision** by **the** City Council. Any expansion of a permitted conditional use on the property shall require approval of the expansion of the use by the Board of Adjustment.

**Section 7. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements*, Subsection A.5.e is hereby amended by deleting the highlighted strike-through text. All other items in current adopted portion of code not reflected below shall remain as is.

- e. Appeals: Should any aggrieved individual or firm wish to appeal the decision of the Director of Development Services or designee, a written request ~~on forms prescribed by the Director for said appeal~~, along with the appropriate fee, shall be received and stamped filed by the Development Services Department within a period of ten (10) business days following the decision. Within thirty (30) days of receiving such a request, the Director shall schedule a **public** hearing on the matter of the appeal before the Board of Adjustment to review and render a decision on said appeal. The decision of the Board is appealable to the District Court.

**Section 8. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements*, Subsection A.6.b.(3) is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

- (3) The Director of Development Services or **his** designee may deem an overlay district site plan as preliminarily approved by staff, and then send the application materials to the Mayor, City Council, and **Plan Planning** and Zoning Commission for their individual review. If two (2) or more members of the Council and commission inform the Director of Development Services or **his** designee of their ~~desire to not approve~~ **hesitation in recommending approval of** the application request **or desire for additional information**, the request is then placed on the next available agenda for consideration by the ~~full~~ **commission**. ~~Their~~ **The commission's written resolution of** recommendation is



then forwarded to the next available Council agenda for final **decision action**. If, however, there are less than two (2) objections from the Council and commission, the application may be approved administratively by the Director of Development Services at an administrative hearing that has been advertised by posting a notice in the designated area forty-eight (48) hours before the hearing.

**Section 9. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements – Process and Procedures*, Section 8: *Entitlements*, Subsection A.6.f is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

- f. Appeals: Should any aggrieved individual or firm wish to appeal the decision of the Director, a written request ~~on forms prescribed by the Director of Development Services for said appeal~~, along with the appropriate fee, shall be received and stamped filed by the Development Services Department within a period of ten (10) business days following the Director's decision. Within thirty (30) days of receiving such a request, the Director shall schedule a ~~public~~ hearing on the matter of the appeal **before the Board of Adjustment to review and render a decision on said appeal. The decision of the Board is appealable to the District Court.** ~~before the commission in order for the commission to review and render a decision on said appeal. The decision of the commission is appealable to the Board of Adjustment.~~

~~Should any aggrieved individual or firm wish to appeal the decision of the commission on an appeal, a written request on forms prescribed by the Director of Development Services for said appeal, along with the appropriate fee, shall be received and stamped filed by the Development Services Department within a period of ten (10) business days following the commission's decision. Within thirty (30) days of receiving such a request, the Director shall schedule a public hearing of the Board of Adjustment to review and render a decision on said appeal.~~

~~Only such items considered under appeal by the commission shall be considered by the Board of Adjustment during its review of the appeal of the commission's decision.~~

**Section 10. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements*, Section 9: *Filing And Processing of Application Requests*, Subsection A.1.f: is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

- f. Appeal Of Determination Of Completeness: If the Director of ~~Community~~ **Services** determines that an application is incomplete, the applicant shall have the right to appeal that determination. ~~to the commission for site plan, major modification, or minor modification entitlements or the Board of Adjustment for permitted conditional use entitlements.~~

A written request for said appeal shall be received and stamped filed by the Community Development Department within a period of ten (10) business days following the issuance of the notice of incompleteness by the department. Within thirty (30) days of receiving such a request, the Director shall schedule a hearing ~~of the commission~~ **before the Board of Adjustment** to review and render a decision on said appeal. **The decision of the Board is appealable to the District Court.**

~~Should any aggrieved individual or firm wish to appeal the decision of the commission or Board of Adjustment, a written request for said appeal shall be received and stamped filed by the Department of Community Development within a period of ten (10) business days following the commission's or Board of Adjustment's decision. Within thirty (30) days of receiving such a request, the Director shall schedule a hearing of the City Council to review and render a decision on appeals of the commission. Appeals of the Board of Adjustment's decisions are heard in the District Court of Iowa.~~

~~Only such items considered under appeal by the commission shall be considered by the City Council during its review of the appeal of the commission's decision.~~

**Section 11. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements*, Section 10: *Notice and Hearing Procedures*, Subsection C is hereby amended by deleting the highlighted strike-through text and renumbering accordingly. All other items in current adopted portion of code not reflected below shall remain as is.

- C. ~~Hearing Quorum: A quorum for a hearing before the commission, board of adjustment, or the city council shall consist of four (4), three (3), and three (3) members respectively. The approval of any, decision or permit, or other matters brought before the respective body, requires the concurrence of a majority of the quorum except in those cases where state law or the rules of procedure for the respective body state otherwise.~~

**Section 12. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements*, Section 10: *Notice and Hearing Procedures*, Subsection F: *Decisions* is hereby amended by deleting the highlighted strike-through text and renumbering accordingly and adding the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

F. Decisions:

1. Decision Options: ~~Either the director of community development services, the commission, the~~ **The** board of adjustment, or the city council, as the case may be, hearing a discretionary matter may approve, deny or modify, wholly or partly, the request being reviewed. **The Director of Development Services may administratively approve development permits as presented for which approval authority has been specifically granted.** The ~~authority~~ **approval body** may impose such conditions and limitations as it deems necessary to assure that the general purpose and intent of this title and its various chapters will be observed, and that the public interest, health, safety, convenience and welfare will be served. In absence of any provision to the contrary in a decision granting a request, said request is granted as set forth in the application. All conditions and restrictions applied to a decision on a project not appealed shall automatically continue to govern and limit the subject use or structure for the duration of the entitlement.
2. Notice Of Decision: ~~Not later than thirty (30) calendar days following the day a decision is rendered, the director of community development shall send, by regular United States mail, the decision making authority's decision in a resolution or letter form to be mailed to the applicant or appellant, as the case may be, in care of the address appearing on the application or such other address designated in writing by the applicant or appellant. (Ord. 1190, 6-17-1996)~~
3. Finality Of Decision: An administrative decision ~~or a decision~~ of the director of ~~community development services, the commission,~~ **as well as decisions** of the board of adjustment, or the city council, shall become final ~~and conclusive~~ at the expiration of the decision's appeal period unless, prior to the expiration of said period

of appeal, ~~an a written appeal in proper form and~~ with the appropriate fees is duly filed with the department of ~~community development~~ **services**. The filing of ~~such an~~ appeal **to the Board of Adjustment or City Council as allowed by this code** shall automatically stay all proceedings in furtherance of the subject application request. Neither the applicant nor any enforcement agency may rely on an authority's decision until the expiration of the decision's appeal period or until the appeal has been resolved, whichever period expires later. ***Appeals to district court as allowed by this code or the Code of Iowa shall not automatically stay any proceeding in furtherance of the subject application request.***

**Section 13. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements*, Section 11: *Modification, Suspension and Revocation For Cause*, Subsections B is hereby amended by deleting the highlighted strike-through text. All other items in current adopted portion of code not reflected below shall remain as is.

- B. Nonwaiver: The failure of the Director of Development ~~Community Services, the Commission,~~ the Board of Adjustment, or the City Council to revoke a variance or permit or suspend its use whenever cause therefor exists or occurs does not constitute a waiver of such right with respect to any subsequent cause for revocation or suspension of the use.

**Section 14. Amendment.** Title 9: *Zoning*, Chapter 1: *Entitlements*, Section 14: *Amendments*, Subsections A through D is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

- A. Authority: The City Council may, from time to time on its own action or on petition, after public notice and hearing as provided by law and after ~~report~~ **receiving a written recommendation** by the Planning and Zoning Commission, amend, supplement or change the boundaries or regulations herein or subsequently established, and such amendment shall not become effective except by the favorable vote of a majority of all the members of the City Council.
- B. Petition For Amendment: Whenever any person desires that any amendment or change be made in this title, including the text and/or zone plan, as to any property in the City, and there shall be presented to the Director of Development Services a petition requesting such change or amendment and clearly describing the property and its boundaries as to which the change or amendment is desired, duly signed by the owners of fifty percent (50%) of the area of all real estate included within the boundaries of said tract as described in said petition, and in addition, duly signed by the owners of fifty percent (50%) of the area of all real estate lying outside of said tract but within two hundred fifty feet (250') of the boundaries thereof and intervening streets and alleys not to be included in computing such two hundred fifty feet (250'), it shall be the duty of the Council to vote upon such petition within ninety (90) days after the filing of the ~~report~~ **written recommendation** from the Planning and Zoning Commission.
- C. Amendment Disapproval Or Protest: In case the proposed amendment, supplement or change be ~~disapproved~~ **recommended for denial** by the Planning and Zoning Commission, or a protest be presented duly signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof, extending the depth of one lot or not to exceed



two hundred feet (200') therefrom, or of those directly opposite thereto, extending the depth of one lot nor not to exceed two hundred feet (200') from the street frontage of such opposite lots, such amendments shall not become effective except by the favorable vote of at least three-fourths (3/4) of all the members of the Council. Whenever any petition for an amendment, supplement or change of the zoning or regulations herein contained or subsequently established shall have been denied by the City Council, then no new petition covering the same property to the same property or the same property and additional property shall be filed with or considered by the City Council until one year shall have elapsed from the date of action by the City Council on the first petition. In the event the **applicant** ~~appellant~~ withdraws the petition for rezoning prior to final **decision action** by the City Council, no new petition covering the same property or the same property and additional property shall be filed with or considered by the City Council until six (6) months shall have elapsed from the date of withdrawal.

~~D. Fee: Before any action shall be taken as provided in this section, the party or parties proposing or recommending a change in the district regulations or district boundaries shall deposit with the City the sum of one hundred dollars (\$100.00) to cover the approximate costs of this procedure and under no conditions shall said sum or any part thereof be refunded for failure of said amendment to be enacted into law.~~

**Section 15. Amendment.** Title 9: *Zoning*, Chapter 3: *General Zoning Provisions*, Section 3: *Scope, Modifications and Exceptions*, Subsection D.2 is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

2. Special Permit Approval: Before issuance of any special permit for any of the above buildings or uses, the city council shall refer the proposed application to the **city** planning and zoning commission, which **the** commission shall be given forty-five (45) days in which to make a **report written recommendation** regarding the effect of such proposed building or use upon the character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the general welfare. No action shall be taken upon any application for a proposed building or use above referred to until **and unless** the **report written recommendation** of the planning and zoning commission has been filed; provided, however, that if no **report written recommendation** is received from the planning and zoning commission within forty-five (45) days, it shall be assumed that a **written recommendation of** approval of the application has been given by the said commission.

**Section 16. Amendment.** Title 9: *Zoning*, Chapter 3: *General Zoning Provisions*, Section 11: *Sidewalks Required*, Subsection F is hereby amended by deleting the highlighted strike-through text. All other items in current adopted portion of code not reflected below shall remain as is.

- F. When the strict application of standards or requirements established by this section would cause substantial hardship or impose unreasonable restrictions regarding the installation of a sidewalk(s) because of natural or physical conditions or limitations not created by the property owner, the Council may grant such deferrals and/or waivers from these standards or requirements as may be necessary pursuant to the following procedure. At such time when the conditions or limitations are eliminated, the property owner(s) will be required to install such sidewalk(s) within one hundred twenty (120) days after written notification by the City.

~~The applicant under this subsection shall prepare an application on the appropriate prescribed form supplied by the Community Development Department for the review of the Plan and Zoning Commission and/or the City Council. The applicant may request a waiver or deferral of the sidewalk installation requirement, which on any new development will be forwarded to the commission for its review and recommendation to the City Council, and all requests will be presented to the City Council, who shall either approve, approve subject to conditions, or disapprove of the request based upon criteria adopted by the City Council.~~

**Section 17. Amendment.** Title 9: *Zoning*, Chapter 9: *Planned Unit Development District*, Section 6: *Review Process*, Subsection D: City Council is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

- E. City Council: Within a period of sixty (60) days after the City Council is in receipt of the ~~report~~ **written recommendation** from the Planning and Zoning Commission, the City Council shall hold a public hearing on the proposed PUD.

**Section 18. Amendment.** Title 9: *Zoning*, Chapter 14: *Accessory Structures*, Section 3: *Interpretations*, is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

Where any accessory structure is not specifically identified in this chapter, the Director of ~~Community~~ Development **Services** shall review the accessory structure when requested to do so, and based on the characteristics of the proposed accessory structure, determine the appropriate standards to regulate said accessory structure.

Should any aggrieved individual or firm wish to appeal the decision of the Director, a written request ~~on forms prescribed by the Director of Community Development for said appeal~~, along with the appropriate fee, shall be received and stamped filed by the Department of ~~Community~~ Development **Services** within a period of ten (10) business days following the Director's decision. Within thirty (30) days of receiving such a request, the Director shall schedule a public hearing **before the Board of Adjustment to review and render a decision on said appeal. The decision of the Board is appealable to the District Court.** ~~of the Planning and Zoning Commission to review and render a decision on said appeal. The decision of the Planning and Zoning Commission is appealable to the City Council.~~

~~Should any aggrieved individual or firm wish to appeal the decision of the Planning and Zoning Commission on an appeal, a written request on forms prescribed by the Director of Community Development for said appeal, along with the appropriate fee, shall be received and stamped filed by the Department of Community Development within a period of ten (10) business days following the Planning and Zoning Commission's decision.~~

~~Within thirty (30) days of receiving such a request, the Director shall schedule a public hearing of the City Council to review and render a decision on said appeal.~~

~~Only such items considered under appeal by the Planning and Zoning Commission shall be considered by the City Council during its review of the appeal of the Planning and Zoning Commission's decision.~~

**Section 19. Amendment.** Title 9: *Zoning*, Chapter 15: *Off-Street Parking and Loading*, Section 4: *Off-Street Parking Regulations*, is hereby amended by deleting the highlighted strike-through text. All other items in current adopted portion of code not reflected below shall remain as is.

4. Accessory Uses: Parking requirements for accessory uses within the same commercial or industrial building as a principal use may be reduced up to fifty percent (50%), upon the determination of the Director ~~or the commission, whichever has jurisdiction~~, that such a reduction is justified, based upon the size, shape, and location of the site and the combination of intended uses involved.

**Section 20. Amendment.** Title 10: *Subdivision Regulations*, Chapter 1: *General Provisions*, Section 5: *Variations and Exceptions*, is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

5. Whenever the tract proposed to be subdivided is of such unusual topography, size or conditions shape or is surrounded by such development or unusual that the strict application of the requirements contained in these regulations would result in substantial hardships or injustices, the council, upon recommendation of the commission, may vary or modify such requirements wherever provided within this title so that the subdivider is allowed to develop his property in a reasonable manner; but so, at the same time, the public welfare and interest of the city and surrounding area is protected and the general intent and spirit of these regulations is preserved. In such cases the use of planned unit development zoning for such site shall be considered and may be required by the council.

With regard to auditor's plats the ~~commission and~~ council shall have the right to waive provisions governing ~~preliminary~~ approval and public improvements outlined herein providing there is on file in the ~~commission office~~ **with the city**, a copy of the request of the county auditor ordering such plat and a letter from the auditor stating that the plat as submitted meets the requirements for which he has ordered the plat.

**Section 21. Amendment.** Title 10: *Subdivision Regulations*, Chapter 2: *Plats and Procedures*, Section 3: *Final Plat Requirements*, Subsection A: *Numbers of Copies and Scale* is hereby amended by deleting the highlighted strike-through text. All other items in current adopted portion of code not reflected below shall remain as is.

- A. Number of Copies and Scale: When a preliminary plat is approved, the subdivider shall submit twelve (12) copies of the final plat for review by the ~~Commission and by the Council~~. The scale of the map shall be one inch equals fifty feet (1" = 50') on small subdivisions of under twenty five (25) lots and one inch equals one hundred feet (1" = 100') on large subdivisions, unless otherwise determined by the Commission or Council. In addition, there shall be submitted three (3) copies of a reproducible quality photo reduction of the final plat on paper no larger than eight and one-half inches by eleven inches (8<sup>1</sup>/<sub>2</sub>" x 11").

**Section 22. Amendment.** Title 10: *Subdivision Regulations*, Chapter 2: *Plats and Procedures*, Section 3: *Final Plat Requirements*, Subsection C.8 is hereby amended by inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.



8. The **applicant** subdivider shall **provide** file with the City Clerk a form of resolution outlining all required details **and that are to be considered a part of the Council action.** Said forms of resolution shall describe the property included in the area being platted; shall state that the **associated preliminary** plat **has had** been submitted to the Planning and Zoning Commission and that they **have had** acted thereon as provided by law; that the owner has complied with all conditions as set forth in this Chapter or as required by **chapter 409,** Code of Iowa; that all the lands shown on the plat or as described in the resolution within the platted area which are dedicated for the perpetual use of the public are acceptable by the City; that any acceptance or approval of the plat is contingent upon the filing of covenants and conditions, if any, pertaining to the plat, and that the plat is approved and the Mayor and City Clerk are directed to certify the resolution affixed to the plat.

**Section 23. Amendment.** Title 10: *Subdivision Regulations*, Chapter 3: *Design Standards and Required Improvements*, Section 2: *Improvements*, Subsection A.1.f is hereby amended by deleting the highlighted strike-through text. All other items in current adopted portion of code not reflected below shall remain as is.

- f. When the strict application of standards or requirements established by this section would cause substantial hardship or impose unreasonable restrictions regarding the installation of a sidewalk(s) because of natural or physical conditions or limitations not created by the property owner, the council may grant such deferrals and/or waivers from these standards or requirements as may be necessary pursuant to the following procedure. At such time when the conditions or limitations are eliminated, the property owner(s) will be required to install such sidewalk(s) within one hundred twenty (120) days after written notification by the city.

~~The applicant under this subsection shall prepare an application on the appropriate prescribed form supplied by the community development department for the review of the plan and zoning commission and/or the city council. The applicant may request a waiver or deferral of the sidewalk installation requirement, which on any new development will be forwarded to the commission for its review and recommendation to the city council, and all requests will be presented to the city council, who shall either approve, approve subject to conditions, or deny disapprove of the request based upon criteria adopted by the city council.~~

**Section 24. Repealer.** All ordinances of parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 25. 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 26. 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 27. Other Remedies.** In addition to the provisions set out in 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 28. Effective Date.** This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

**PASSED AND APPROVED** by the City Council on XXXX.

\_\_\_\_\_  
Russ Trimble, Mayor

Attest:

\_\_\_\_\_  
Ryan Jacobson, City Clerk

The foregoing Ordinance No. \_\_\_\_\_ was adopted by the Council for the City of West Des Moines, Iowa, on \_\_\_\_\_, 2022, and published in the Des Moines Register on \_\_\_\_\_, 2022.