

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: May 22, 2023

ITEM: Ordinance Amendment, Amend Title 9 (Zoning) to modify regulations pertaining to internal department processes and procedures associated with development application submittals and review - City Initiated – AO-005677-2022

RESOLUTION: Approval of Ordinance Amendment

Background: Development Services Staff is initiating an amendment to the chapters and sections identified below in Title 9 (Zoning) to modify regulations pertaining to internal development application submittal and review processes and any public hearing noticing or approval procedures that are not consistent with Iowa State Code as currently regulated within City Code.

Specifically, the following changes are proposed with this request:

- Title 9: Zoning
 - Chapter 1: Entitlements – Process and Procedures, Section 8: Entitlements
 - Chapter 1: Entitlements – Process and Procedures, Section 9: Filing and Processing of Application Requests
 - Chapter 1: Entitlements – Process and Procedures, Section 10: Notice and Hearing Procedures
 - Chapter 1: Entitlements – Process and Procedures, Section 14: Amendments
 - Chapter 3: General Zoning Provisions: Section 4: Nonconforming Buildings, Structures, Uses, Uses of Land, or Uses of Buildings or Structures
 - Chapter 5: Agricultural/Open Space and Residential Zoning District: Section 3: Interpretations
 - Chapter 6: Commercial, Office, and Industrial Zoning District: Section 3: Interpretations
 - Chapter 7: Setback and Bulk Density Regulations: Section 3: Interpretations
 - Chapter 9: Planned Unit Development District: Section 4: Intent
 - Chapter 9: Planned Unit Development District: Section 5: Application Requirements
 - Chapter 9: Planned Unit Development District: Section 6: Review Process
 - Chapter 10: Performance Standards: Section 3: Interpretations
 - Chapter 10: Performance Standards: Section 4: Specific Use Regulations
 - Chapter 11: PCP Professional Commerce Park District: Section 2: Use Regulations
 - Chapter 11: PCP Professional Commerce Park District: Section 6: Commission Review and Council Approval Requirements
 - Chapter 14: Accessory Structures: Section 5: General Provisions
 - Chapter 16: Temporary Use Permits: Section 3: Application and Permit Processing
 - Chapter 16: Temporary Use Permits: Section 10: Fees

Staff Review & Comment:

- **Ordinance Amendment Intent:** The intent of this ordinance is to remove irrelevant internal process language within the zoning code and to amend any language inconsistent with the State of Iowa Code. Discrepancies between standard city practices and staff's interpretation of stated processes and procedures are the basis for the lawsuit brought on the heels of the Suite Shots PUD adoption. This amendment intends to provide staff the ability to establish routines that ensures the city gets what is needed for information while setting expectations for the development community of the application review and approval process.
- **Key Aspects of Proposed Amendment:** The proposed ordinance generally removes any language related to processing of internal city applications, submittal requirements for such applications, and procedure language that may have changed overtime on the processing of applications internally. This amendment also includes removal of any requirements that are not consistent with the State of Iowa Code for application submittal requirements, noticing requirements and appeals processes. The desire is to have the city follow application requirements consistent with the State of Iowa Code requirements for application, noticing and appeals processes. This will eliminate inconsistency with how the city processes and notices development applications.

Outstanding Issues: There are no outstanding issues.

Planning and Zoning Commission Action:

Date: May 22, 2023

Vote:

Recommendation:

Planning and Zoning Commission Discussion:

City Council First Reading:

Date:

Vote:

Recommendation: Approve the Ordinance Amendment to City Code.

Lead Staff Member: Karen Marren

Approval Meeting Dates:

Planning & Zoning Commission	May 22, 2023
City Council: First Reading	
City Council: Second Reading	
City Council: Third Reading	

Staff Report Reviews

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

Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	5/17/23
Date(s) of Mailed Notices	Not Required

Council Subcommittee Review (if applicable)

Subcommittee	Development & Planning			
Date Reviewed	6/5/23 – Upcoming Project			
Recommendation	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Split <input type="checkbox"/>	No Discussion <input type="checkbox"/>

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION
NO. PZC-23-026

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) to modify regulations pertaining to internal development application submittal and review processes and any public hearing noticing or approval procedures that are not consistent with State of Iowa Code as currently regulated within City Code.

- Title 9: Zoning:
 - Chapter 1: Entitlements – Process and Procedures, Section 8: Entitlements
 - Chapter 1: Entitlements – Process and Procedures, Section 9: Filing and Processing of Application Requests
 - Chapter 1: Entitlements – Process and Procedures, Section 10: Notice and Hearing Procedures
 - Chapter 3: General Zoning Provisions: Section 4: Nonconforming Buildings, Structures, Uses, Uses of Land, or Uses of Buildings or Structures
 - Chapter 5: Agricultural/Open Space and Residential Zoning District: Section 3: Interpretations
 - Chapter 6: Commercial, Office, and Industrial Zoning District: Section 3: Interpretations
 - Chapter 7: Setback and Bulk Density Regulations: Section 3: Interpretations
 - Chapter 9: Planned Unit Development District: Section 4: Intent
 - Chapter 9: Planned Unit Development District: Section 5: Application Requirements
 - Chapter 9: Planned Unit Development District: Section 6: Review Process
 - Chapter 10: Performance Standards: Section 3: Interpretations
 - Chapter 10: Performance Standards: Section 4: Specific Use Regulations
 - Chapter 11: PCP Professional Commerce Park District: Section 2: Use Regulations
 - Chapter 11: PCP Professional Commerce Park District: Section 6: Commission Review and Council Approval Requirements
 - Chapter 14: Accessory Structures: Section 5: General Provisions
 - Chapter 16: Temporary Use Permits: Section 3: Application and Permit Processing
 - Chapter 16: Temporary Use Permits: Section 10: Fees

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-005677-2022).

PASSED AND ADOPTED on May 22, 2023.

Andrew Conlin, 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 May 22, 2023, by the following vote:

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

ATTEST:

Recording Secretary

Prepared by: Karen Marren, 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 9 (ZONING), CHAPTER 1 (ENTITLEMENTS – PROCESS AND PROCEDURES), CHAPTER 3 (GENERAL ZONING PROVISIONS), CHAPTER 5 (AGRICULTURAL/OPEN SPACE AND RESIDENTIAL ZONING DISTRICT), CHAPTER 6 (COMMERCIAL, OFFICE AND INDUSTRIAL ZONING DISTRICT), CHAPTER 7 (SETBACK AND BULK DENSITY REGULATIONS), CHAPTER 9 (PLANNED UNIT DEVELOPMENT DISTRICT), CHAPTER 10 (PERFORMANCE STANDARDS), CHAPTER 11 (PCP PROFESSIONAL COMMERCE PARK DISTRICT), CHAPTER 14 (ACCESSORY STRUCTURES), AND CHAPTER 16 (TEMPORARY USE PERMITS), PERTAINING TO INTERNAL SUBMITTAL AND REVIEW PROCESSES AND PROCEDURES THAT ARE NOT CONSISTENT WITH IOWA STATE CODE.

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 8: *Entitlements*, is hereby amended by deleting the highlighted strike-through text, inserting the text in bold italics accordingly and relettering as required. All other items in current adopted section but 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 the 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, **and** indicate applicability, ~~and establish requirements for submittal~~ for all entitlements required by this title:
1. Structures Not Requiring A Permit: A building located in any single family residential district which is less than one hundred twenty (120) square feet in area and not placed on a permanent foundation does not require a permit. Structures not requiring a permit also include dog houses, dog runs/pens, play houses or play equipment. Any temporary structures such as tents or canopies having an area less than two hundred (200) square feet in area or used exclusively for camping do not require a permit, although an event utilizing temporary structures may require a temporary use or sound

permit. These structures must meet the same setback and height restrictions as all accessory structures.

2. Site Plan Development Permit:

a. Purpose: The site plan development permit **procedure** provides a method whereby land may be designed and developed as a unit by taking advantage of modern site planning techniques; and to produce an environment of stable, desirable character which will be in harmony with the existing or potential development of the surrounding neighborhood; and to ensure development which meets standards of environmental quality, public health and safety, and efficient use of the City's resources.

b. General Provisions:

(1) Unless otherwise modified below, a site plan development permit shall be required prior to site development and construction for:

(A) New construction of any structure or site improvements associated with any use identified as either permitted (P) or permitted conditionally (Pc) within the use matrix for a zoning district.

(B) Expansion of existing structures, site improvements, use, or operations associated with any use identified as either permitted (P) or permitted conditionally (Pc) within the use matrix for a zoning district.

(C) Any use, based upon a determination of the **Development, Planning and Inspection Manager** **Director of Development Services or their designee** that is a more intense use than the preceding approved use which would result in a potential for a significant impact upon its surroundings.

(2) A site plan development permit shall not be required for:

(A) Single-family detached residential **dwelling uses and structures located within a zoning district in which said use and structure is permitted (P) per the use matrix or is otherwise governed by and in compliance with the provisions stated within chapter 3, "General Zoning Provisions", of this title. *except that, detached townhomes on footprint lots or a common lot in all zoning district shall be required to submit and receive a site plan development permit, including approval of building architecture.***

(B) On properties considered being primarily agricultural in nature and operating as such, agricultural structures which are associated with agricultural production - crops (SIC 01) except greenhouses (SIC 018) and which is permitted (P) within the use matrix for the zoning district.

(3) For projects requiring a site plan development permit, no building or grading permit of any kind shall be issued for any such development until the site plan development permit has been approved, except as herein provided:

(A) Grading permits may be issued prior to approval of a development permit by the City Engineer or designee, subject to all applicable site grading regulations and application procedures of title 8, chapter 5 of this Code, and

(B) Determination by the Director of Development Services or a designee that the site development plan is in substantial conformance with all applicable zoning regulations, **and**.

Any grading permit issued prior to approval of the site plan development permit is at the applicant's own risk and final grades will need to comply with any changes necessary for the site development approval. Structures not required to obtain a site plan development permit shall be required to obtain

the appropriate building and grading permits prior to construction of the structure.

~~e. Application: Application for a site plan development permit shall be made on the prescribed form(s) provided by the Development Services Department. The application shall be accompanied by the prescribed number of copies of a project plan and such other detailed elevations, plans and other information as may be required to adequately evaluate the proposed development. All applications shall be signed by the owner of the property or person with the appropriate power of attorney.~~

d. Required Permit Findings: Site plan development permits shall only be granted if all of the following findings are made; or if conditions and limitations, as the City Council deems necessary, are imposed to allow it to make said findings. It shall be the responsibility of the applicant to prove to the satisfaction of the City Council that the following findings can be made:

- (1) That the proposed development or use is consistent with the West Des Moines Comprehensive Plan and any applicable subarea plan.
- (2) That the proposed development or use does assure compatibility of property uses within the zone and general area.
- (3) That all applicable standards and conditions have been imposed which protect the public health, safety and welfare.
- (4) That there is adequate on site and off site public infrastructure to support the proposed development.
- (5) That the proposed development or use has met all the requirements contained in this Code.
- (6) That the proposed development or use **will** be in keeping with the scale and nature of the surrounding neighborhood.

e. Duration: Upon use inauguration any site plan development permit is considered to run with the land, unless its duration is conditioned at the time the site plan development permit is granted.

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.~~

b. General Provisions: A permitted conditional use permit (Pc) shall be required for those uses as noted in the Agricultural/Open Space and Residential Zoning District and Commercial, Office and Industrial Zoning District matrices, and as specified elsewhere within this title.

~~c. Application: Application for a permitted conditional use permit (Pc) shall be made on the prescribed form provided by the Development Services Department. The application shall be accompanied by the prescribed number of copies of a project plan and such other detailed elevations, plans and other information as may be~~

~~required to adequately evaluate the proposed use. All applications shall be signed by the owner of the property or person with the appropriate power of attorney.~~

- ~~d. Required Permitted Conditional Use Permit Findings: Permitted conditional use permits (Pc) may only be granted if all of the permitted conditional use permit findings from title 2, chapter 2 of this Code are made; or if conditions and limitations, as the Board of Adjustment deems necessary, are imposed to allow it to make said findings. It shall be the responsibility of the applicant to prove to the satisfaction of the Board of Adjustment that findings can be made.~~
- e. Duration: Upon vesting of entitlement any permitted conditional use permit (Pc) use may continue until such time the use is discontinued for a period of one year or a different use is inaugurated on the site. The duration for any Pc use may be conditioned at the time the permitted conditional use permit (Pc) is granted.

4. Major Modifications To **Site Development** Entitlements:

- a. Purpose: The modification procedure is intended to provide a method whereby changes may be made to an existing, approved site plan entitlement. This procedure may allow an applicant to process changes that affect only a portion of a previously approved entitlement.
- b. General Provisions: A major modification is generally applicable when additional ~~public~~ **city** input is necessary due to a request for substantial changes, including, but not limited to, parking requirements, building bulk or area, landscaping plans, site design, architecture or other improvements. A modification shall not be applied for in place of a variance.

All such applications for a major modification shall reopen the review of the entire entitlement and its conditions at the discretion of the approving body.

- ~~e. Application: Application for a major modification shall be made on the same form in the same manner as prescribed for the original entitlement. Such requests shall include submittal of the prescribed number of original approved plans with modifications denoted thereon and such other detailed elevations, plans and other information as may be required to adequately evaluate the proposed development. All applications shall be signed by the owner of the property or person with the appropriate power of attorney.~~

- ~~d. Required Permit Findings: Site plan development permits shall only be granted if all of the following findings are made; or if conditions and limitations, as the City Council deems necessary, are imposed to allow it to make said findings. It shall be the responsibility of the applicant to prove to the satisfaction of the City Council that the following findings can be made:~~
- ~~(1) That the proposed development or use is consistent with the West Des Moines Comprehensive Plan and any applicable subarea plan.~~
 - ~~(2) That the proposed development or use does assure compatibility of property uses within the zone and general area.~~
 - ~~(3) That all applicable standards and conditions have been imposed which protect the public health, safety and welfare.~~
 - ~~(4) That there is adequate on-site and off-site public infrastructure to support the proposed development.~~
 - ~~(5) That the proposed development or use has met all the requirements contained in this Code.~~
 - ~~(6) That the proposed development or use will be in keeping with the scale and nature of the surrounding neighborhood.~~

- ~~d. e. Required Permitted Conditional Use Permit Findings: Permitted conditional use permits (Pc) may only be granted if all of the permitted conditional use permit findings from title 2, chapter 2 of this Code are made; or if conditions and~~

limitations, as the Board of Adjustment deems necessary, are imposed to allow it to make said findings. It shall be the responsibility of the applicant to prove to the satisfaction of the Board of Adjustment that findings can be made.

e-f. Expiration Date: Any major modification granted pursuant to this section shall not affect the expiration date of the original approved permit.

5. Minor Modifications To **Site Development** Entitlements:

a. Purpose: Level 1 and level 2 minor modifications are changes to an approved site plan through a process that allows for a less formal review of projects that encompass minor changes that do not generate substantial impacts and do not warrant public city input.

b. General Provisions:

(1) The Director of Development Services or designee may grant a level 1 or a level 2 minor modification to an approved site plan permit. The modification may govern only the following measurable design/site considerations, which in no case results in a reduction from any minimum standard outlined in this title or the previous directives of the City Council or Board of Adjustment.

(A) A level 1 minor modification may be allowed for the following:

- (i) Modifications to on site circulation drives, parking, and loading or service areas that do not increase the net impervious surface area more than two thousand (2,000) square feet and that do not affect existing topography or drainage;
- (ii) Placement or changes to walls, fences, and retaining walls;
- (iii) Modifications to landscaping that do not affect existing topography or drainage;
- (iv) Modifications to wall facades, reconfiguration and/or addition of architectural features, colors, or finish materials that do not compromise the established theme or otherwise make the structure inconsistent with the architectural design, color, or materials of other structures within the same development or surrounding area;
- (v) Entry vestibules necessary to meet Energy Code requirements and which are no larger than necessary to accommodate accessibility standards;
- (vi) Collocation of communication antennas on existing structures and related accessory buildings up to two thousand (2,000) square feet;
- (vii) Installation of trash enclosures and associated screening;
- (viii) Installation of backup generators and associated screening; and
- (ix) Additions of or expansions of decks and patios for permitted uses.

(B) A level 2 minor modification may be allowed for the following:

- (i) Modifications to on site circulation drives, parking, and loading or service areas which increase the net impervious surface area more than two thousand (2,000) square feet;
- (ii) New freestanding accessory buildings for permitted uses of not more than a total of two thousand (2,000) square feet;
- (iii) New or expansions of patios or building expansions of an existing facility for permitted uses up to fifty percent (50%) of the existing square footage and not more than a total of two thousand (2,000) square feet;

- (iv) Installation of water, storm sewer, and sanitary utilities on the site. Installation of public utilities may be proposed through the minor modification level 2 process, but will be subject to the approval and acceptance of the City Council;
 - (v) Changes in residential density to either decrease the total number of units or to increase the number of units as long as:
 - (a) The density does not exceed the maximum allowed per the designated zoning of the property; and
 - (b) The additional density does not warrant a structural addition or new structure which exceeds two thousand (2,000) square feet of gross floor area;
 - (vi) Changes to topography or drainage that do not affect the ground elevations of sidewalks or buildings.
- (2) Any level 1 minor modification request which exceeds the prescribed limitations outlined in this section shall instead file a level 2 minor modification request or a major modification site plan permit request. A site may have an unlimited number of level 1 minor modifications.
 - (3) Any level 2 minor modification request which exceeds the prescribed limitations outlined in this section or a site which has been the subject of two (2) previous level 2 minor modifications shall instead file a major modification site plan permit request.
 - (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 consideration by the Planning and Zoning Commission with recommendation by written resolution to and 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.
 - (5) Any level 1 or level 2 minor modification to a previously approved site plan that is for a site which has nonconforming attributes, e.g., setbacks, open space percentage, landscaping, parking, and which proposes to increase the scope of any nonconforming attribute shall not be granted approval, except in those cases where a variance is obtained from the Board of Adjustment.
 - (6) Any level 1 or level 2 minor modification to a previously approved site plan that increases the net impervious area by two thousand (2,000) square feet or more, or changes topography that affects drainage patterns within the site, or changes existing detention facilities within or serving the site, including changes to the capacity of a detention facility within or serving the site, or properties that are identified to contribute to known downstream flooding issues will be required to study the effects of the proposal and provide either a revised stormwater management plan or letter of general conformance to an approved stormwater management plan signed by an Iowa licensed engineer.
 - (7) Any level 1 or level 2 minor modification to a previously approved site plan that increases the square footage of the usable area of the building, e.g., expansion of the building or addition or expansion of a patio, or which modifies driveways or internal circulation to the extent that the change would affect traffic on the public street system may require a traffic impact study.
 - (8) The Director of Development Services or designee shall have the discretion to refer any level 1 or level 2 minor modification request to the Plan and

Zoning Commission and City Council for permitted uses or permitted conditional uses.

- c. Application: The level 1 or level 2 minor modification shall require the approval of the Director of Development Services or designee. The Director of Development Services or designee may establish conditions of approval to further the intent of this section or other City Code regulations. ~~An application for a level 1 or a level 2 minor modification shall be on a form prescribed by the Director and shall be filed with the Development Services Department with such other detailed elevations, plans and other information as may be required to adequately evaluate the proposed development.~~
 - d. Required Permit Findings: Level 1 and level 2 minor modifications shall only be granted if all of the following findings are made. It shall be the responsibility of the applicant to prove that the following findings can be made:
 - (1) That the proposed development or use is consistent with the West Des Moines Comprehensive Plan and any applicable subarea plan;
 - (2) That the proposed development or use does assure compatibility of property uses within the zone and general area;
 - (3) That all applicable standards and conditions have been imposed which protect the public health, safety and welfare;
 - (4) That there is adequate on site and off site public infrastructure to support the proposed development; and
 - (5) That the proposed development or use has met all the requirements contained in this Code.
 - e. ~~Appeals: Should any aggrieved individual or firm wish to appeal the decision of the Director of Development Services or designee, a written request, 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 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 of Adjustment is appealable to the District Court.~~
6. Overlay District Site Plan Permit:
- a. Purpose: The overlay district site plan development permit procedure provides a method whereby land within an overlay district area may be designed and developed as a unit by taking advantage of modern site planning techniques; and to produce an environment of stable, desirable character which will be in harmony with the existing or potential development of the surrounding neighborhood; and to ensure development which meets standards of environmental quality, public health and safety, and efficient use of the City's resources.
 - b. General Provisions:
 - (1) An overlay district site plan development permit shall be required for:
 - (A) All uses within the Town Center Overlay District, except for single-family detached residential, when new construction or expansion of existing structures or area of use or operation is proposed.
 - (B) Any use, based upon a determination of the Director of Development Services that is a more intense use than the preceding approved use which would result in a potential for a significant impact upon its surroundings.
 - (2) For projects requiring a site plan development permit, no building or grading permit of any kind shall be issued for any such development until the site plan development permit has been approved, except as herein provided.

- (A) Grading permits may be issued prior to approval of a development permit by the City Engineer or designee, subject to all applicable site grading regulations and application procedures of title 8, chapter 5 of this Code, and
- (B) Determination by the Director of Development Services or a designee that the site development plan is in substantial conformance with all applicable zoning regulations, and.

Any grading permit issued prior to approval of the site plan development permit is at the applicant's own risk and final grades will need to comply with any changes necessary for the site development approval. Structures not required to obtain a site plan development permit shall be required to obtain the appropriate building and grading permits prior to construction of the structure.

- (3) The Director of Development Services or 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 Planning and Zoning Commission for their individual review. If two (2) or more members of the City Council and Planning and Zoning Commission inform the Director of Development Services or designee of their 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 Planning and Zoning Commission. The Planning and Zoning Commission's written resolution of recommendation is then forwarded to the next available City Council agenda for final decision. If, however, there are less than two (2) objections from the City Council and Planning and Zoning 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.
- (4) The Director of Development Services or **his** **their** designee shall have the discretion to refer any overlay district site plan request to the next available agenda for consideration by the commission, whose recommendation will be forwarded to the next available Council agenda for final action.

~~e. Application: Application for an overlay district site plan development permit shall be made on the prescribed form(s) provided by the Development Services Department and shall require the approval of the Director of Development Services or his or her designee. The application shall be accompanied by the prescribed number of copies of a project plan and such other detailed elevations, plans and other information as may be required to adequately evaluate the proposed development. The Director may also establish additional conditions to further the intent of this section. All applications shall be signed by the owner of the property or person with the appropriate power of attorney.~~

- d. Required Permit Findings: Overlay district site plan development permits shall only be granted if all of the following findings are made; or if conditions and limitations, as the Development Services Director deems necessary, are imposed to allow it to make said findings. It shall be the responsibility of the applicant to prove to the satisfaction of the Director of Development Services that the following findings can be made:
 - (1) That the proposed development or use is consistent with the West Des Moines comprehensive plan, overlay district guidelines, and applicable specific plan.
 - (2) That the proposed development or use does assure compatibility of property uses within the zone and general area.

- (3) That all applicable standards and conditions have been imposed which protect the public health, safety and welfare.
 - (4) That there is adequate on site and off site public infrastructure to support the proposed development.
 - (5) That the proposed development or use has met all the requirements contained in this Code.
 - (6) That the proposed development or use be in keeping with the scale and nature of the surrounding neighborhood.
- e. Duration: Upon use inauguration any overlay district site plan development permit is considered to run with the land, unless its duration is conditioned at the time the site plan development permit is granted.
- ~~f. Appeals: Should any aggrieved individual or firm wish to appeal the decision of the Director of Development Services a written request 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 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 of Adjustment is appealable to the District Court.~~

7. Extension Of Entitlement:

- a. Purpose: The extension of entitlement procedure is intended to provide a method to extend the time originally allowed for ~~use~~ inauguration of a previously approved project that has not expired.
- b. General Provisions:
 - (1) Entitlements Except Permitted Conditional Use Permits: The City Council ~~or Director of Community Development, if properly authorized,~~ may grant time extensions for any entitlement in this title as provided herein except permitted conditional use permit entitlements, unless stated otherwise in the conditions of approval. The time limits for any extension of an entitlement shall be at the discretion of the City Council ~~or Director~~ and shall be determined on a case by case basis.
 - (2) Permitted Conditional Use Permit Entitlements: The Board of Adjustment ~~or Director of Community Development, if properly authorized,~~ may grant time extensions for permitted conditional use permit entitlement in this title, unless stated otherwise in the conditions of approval. The time limits for any extension of an entitlement shall be at the discretion of the Board of Adjustment ~~or Director~~ and shall be determined on a case by case basis.
- c. Applications: Such extensions shall be requested ~~of the Community Development Department in writing, accompanied by the appropriate fee,~~ on or before the date of expiration of the entitlement.
- d. Required Findings: The City Council, Board of Adjustment, or Director may grant the extension only after finding that:
 - (1) There have been no changes to the provisions of the Comprehensive Plan or zoning regulations applicable to the project since the approval of the entitlement; and
 - (2) There have been no changes in the character of the site or its surroundings which affect how the standards of the Comprehensive Plan or zoning regulations apply to the project; and
 - (3) There have been no changes in the character of the site or its surroundings which detrimentally affect the environment; and
 - (4) That substantial site work could not be completed because of circumstances beyond the control of the applicant. (This finding is not applicable to time

extensions for a continuation of a use of a previously approved entitlement that as part of its approval allowed the filing of a time extension at a specified time or intervals of time.)

- e. Continuation Of A Permit During Application Renewal Process: Unless otherwise provided in the conditions of the permit, permits being processed for renewal (time extensions) shall remain in full force and effect until the renewal request is acted on and all administrative appeals have been exhausted, ~~provided that the renewal application was accepted as complete by the Community Development Department prior to the expiration of the permit.~~ All the terms and conditions of the original permit must be followed at all times.

Section 2. Amendment. Title 9: Zoning, Chapter 1: Entitlements – Process and Procedures, Section 9: Filing and Processing of Application Requests, Subsection “A” is hereby amended by deleting the highlighted strike-through text, inserting the text in bold italics accordingly and relettering as required. All other items in current adopted section but not reflected below shall remain as is.

- A. Application requests shall be filed with the ~~Community Development~~ ***Development Services*** Department. ~~No application request shall be accepted for filing and processing unless it conforms to the requirements of this title, contains in a full, true and correct form the required materials and information prescribed by the forms supplied by the Community Development Department and is accompanied by the appropriate fees. The City staff may, after conferring with the applicant and with the approval of the City Council or Board of Adjustment, refer any application request to an independent and qualified consultant for review and evaluation of issues beyond the expertise of City staff. The costs for all such consultant work shall be borne by the applicant and are independent of the fees paid to the Community Development Department for processing of the requests.~~
 - 1. ~~Application Process: Applications may be filed subject to the following provisions:~~
 - a. ~~Permit: An application for an entitlement, including extension, may be filed by the owner of the property, a person with a power of attorney from the owner of the property, or the Director of Community Development upon resolution of the commission, Board of Adjustment, or City Council.~~
 - b. ~~Preapplication: Prior to submission of a permit application, a preapplication review may be conducted by the Department of Community Development to consider a proposed project. Upon submittal of a preapplication, staff will evaluate the preapplication to ensure compliance with applicable City regulations, indicate major problems, and identify additional required information. When the preapplication review is completed by staff, the applicant will receive a written response which will include a specific evaluation of the proposed project. This evaluation is preliminary in nature and shall not be considered an intention to approve or deny any particular project and is not intended to be inclusive of the comments but only to identify major areas of concern. The City reserves the right to supplement additional comments that may be generated during the formal review of the application.~~
 - c. ~~Content Of Applications: The content of applications shall be determined by the Community Development Department as indicated under the appropriate entitlement. Site plans and elevations in color, with building materials identified, floor plans and samples of exterior finishing materials~~

may be required as part of the permit procedure along with any other information deemed necessary for the City's review.

- d. ~~Determination Of Completeness: Within thirty (30) days of the date of acceptance of an application for an entitlement, the Director of Community Development or his designee shall determine whether an application includes the information required by this section and shall notify the applicant of the results of that determination. The applicant shall be informed by letter that either the application is complete or that the application is incomplete and that additional information, specified in the letter, must be provided to make the application complete. Failure of the Director or his designee to respond within thirty (30) days of acceptance of an application with a determination as to completeness shall be deemed as a determination that the application is complete.~~

~~If an applicant is notified that a submitted application is incomplete, the time used by the applicant for preparation and submittal of the required additional information shall be excluded from the period within which the Director or his designee must complete the determination of completeness. The time available to an applicant for preparation and submittal of additional information is limited by subsection A1g, "Applications Deemed Withdrawn", of this section. Submittal of the additional staff requested information establishes a new thirty (30) day period for a determination of completeness.~~

- e. ~~Waivers Of Content: The Director of Community Development may find that unusual characteristics of a project site or the nature of a project make it not feasible or unnecessary for the applicant to submit all of the information for an application required by this title. In such cases, the Director may waive or reduce the requirements if it is also found that the absence of such information will not inhibit the City's ability to evaluate the compliance of the proposed project with the standards of this title and any other requirements of this Code.~~
- f. ~~Appeal Of Determination Of Completeness: If the Director of Development Services determines that an application is incomplete, the applicant shall have the right to appeal that determination.~~

~~A written request for said appeal shall be received and stamped filed by the Development Services 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 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.~~

- g. **B. Applications Deemed Withdrawn:** Any application received shall be deemed withdrawn if it has been held in abeyance, awaiting the submittal of additional requested information from the applicant, and/or if the applicant has not communicated in writing with the City and/or made reasonable progress within ninety (90) days from the last written *notification communication* from the City to the applicant. ***Upon initiation of the application review process as signaled by distribution of the project plans to other departments and/or outside agencies, all*** ~~The application fees~~ **is are** nonrefundable. Any application deemed withdrawn

shall require submission of a new application and fees to begin the review and approval process.

- ~~h. Development Review Meeting: Once an application has been acknowledged as complete by the City, a development review meeting may be held among various governmental agencies, e.g., City departments, waterworks, Parks and Recreation Department, school district, etc., to review the application with the applicant. This meeting may result in recommendations by affected public agencies for changes to the application. Preliminary conditions will be discussed at the meeting. (Ord. 1190, 6-17-1996)~~
- ~~i. Hearing: After completion of a staff report, the Director of Community Development shall set the project for a hearing before the commission and City Council for site plan, major modification, or minor modification entitlements or the Board of Adjustment for permitted conditional use entitlements in accordance with section 9-1-10 of this chapter.~~
- ~~j. Fees: Each application request for any purpose, including appeals, shall be accompanied by the fee specified by City Council or Board of Adjustment resolution before it is accepted for filing and processing.~~

Section 3. Amendment. Title 9: Zoning, Chapter 1: Entitlements – Process and Procedures, Section 10: Notice and Hearing Procedures, Subsection A: Notice for Public Hearings is hereby amended by deleting the highlighted strike-through text, inserting the text in bold italics accordingly and relettering as required. All other items in current adopted section but not reflected below shall remain as is.

- A. Notice For Public Hearings: Whenever a public hearing is required by the planning and zoning commission, the board of adjustment, and the city council under *the Code of Iowa* or this title, before the application can be acted upon, the community development department *city* shall set a date, time and place for the matter to be heard and. ***In accordance with the Code of Iowa, the city*** shall give notice of said hearing by mailing a written notice, postage prepaid, containing the date, time and place of hearing, not less than four (4) calendar days and not more than twenty (20) calendar days prior to the date of the hearing, to the applicant, ***to the owner(s) of the property involved, and to the owners owner(s) of the property situated within a radius of three hundred seventy feet (370'), including public right of way, of the exterior boundaries of the parcel(s) on which the proposed use or project is to be located. Ownership information as provided in the County Assessor's online data on the date that notice information is prepared for the project property owners (s) and of properties within 370' shall be used.*** Names and addresses shall be obtained by the applicant from the last equalized assessment roll. In addition to the mailed notice, a notice shall be given by publication in a newspaper of general circulation in accordance with the Iowa Code.

Section 4. Amendment. Title 9: Zoning, Chapter 1: Entitlements – Process and Procedures, Section 10: Notice and Hearing Procedures, Subsection E3: City Council Review Of Minor Modifications is hereby amended by deleting the highlighted strike-through text and renumbering as required.

- ~~3. City Council Review Of Minor Modifications: If a minor modification of a project is approved or conditionally approved, the city council may decide, within the appeal period~~

~~of ten (10) business days, whether to review the project and the conditions imposed by the director of community development or the commission.~~

~~If the city council decides to review the project and conditions, it shall set the matter for a public hearing as provided in this section and hear the matter or direct the commission to hear the matter upon written notice to the applicant.~~

~~At that hearing, the city council or the commission may add, modify or delete conditions when the council or commission, as the case may be, determines that such changes are necessary to ensure that the project conforms to conditions imposed upon the property and applicable city ordinances, comprehensive plan and other policies.~~

~~If the city council does not act within the ten (10) business day appeal period, the decision of the commission or director of community development shall be deemed final.~~

Section 5. Amendment. Title 9: Zoning, Chapter 1: Entitlements – Process and Procedures, Section 14: Amendments, Subsection B: Petition for Amendment is hereby amended by deleting the highlighted strike-through text and relettering as required. All other items in current adopted section but not reflected below shall remain as is.

~~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 City Council to vote upon such petition within ninety (90) days after the filing of the written recommendation from the Planning and Zoning Commission.~~

Section 6. Amendment. Title 9: Zoning, Chapter 3: General Zoning Provisions: Section 4: Nonconforming Buildings, Structures, Uses, Uses of Land, or Uses of Buildings or Structures, Subsection C4e(6)(K) is hereby amended by deleting the highlighted strike-through text. All other items in current adopted section but not reflected below shall remain as is.

(K) That the burden lies with the property owner to notify potential buyers of these provisions.

~~Upon a decision by the Director of Development Services, or designee, notice of the decision will be provided to the property owner in writing. If the application is approved, the acknowledgement and a building permit will need to be submitted along with a copy of the notice of decision to the chief building official, or designee.~~

~~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 7. Amendment. Title 9: Zoning, Chapter 5: Agricultural/Open Space and Residential Zoning District: Section 3: Interpretations, is hereby amended by deleting the highlighted strike-through text, inserting the text in bold italics accordingly and relettering as required.

A. ***Except for single family detached residential dwellings, uses*** Uses shown in the matrix as "permitted" (P) are a permitted use ***by right*** in the applicable district, however, new construction or expansion of existing structures, or expansion of the area of use or operation, ~~except for single family detached residential,~~ shall require ***approval by the City Council through the site plan review process. review and site plan development approval by the city.*** Upon the determination of the Director of Community Development, any use that is identified as a more intensive use than the preceding approved use such that there would be a potential for a significant effect upon its surroundings shall be reviewed through the site plan review process.

B. Uses shown in the matrix as "permitted conditional use permit" (Pc) are ***may be*** permitted in the applicable district following review and approval ~~through the permitted conditional use permit (Pc) process~~ ***by the Board of Adjustment.*** This requirement shall apply to new uses, as well as ~~new construction and building expansions~~ ***the expansion of any use or change in operation.***

~~The use of a~~ A permitted conditional use permit (Pc) allows the City to regulate the intensity of development of a particular use, activity, or location. ~~The use of the A~~ permitted conditional use ~~permit (Pc) process~~ should not be seen as a means to prohibit uses but as a way to allow the City to secure more information concerning a specific use and its operational ***characteristics and apply conditions or restrictions on its operation as deemed necessary to limit impacts to surrounding properties and guard the safety, health and welfare of this community. It is further the intent of this chapter to allow flexibility and diversity of land uses.***

C. Each use is subject to all provisions of this title.

D. Where a proposed land use is not identified in this chapter, the Director of ~~Community Development~~ ***Services or their designee*** shall review the proposed use ~~when requested to do so by letter and,~~ based upon the characteristics of the use ***and***

operational intentions, to determine which of the uses listed in this chapter is *most closely* equivalent to that proposed *and thus whether to classify the property land use as permitted (P) or as a permitted conditional use (Pc)*. The proposed use, if determined to be equivalent to an allowed use, shall be subject to review through the process indicated within the matrix. *It is further the intent of this chapter to allow flexibility and diversity of land uses.*

~~E. Prior to submission of a permit application for either a site plan development permit, a permitted conditional use permit (Pc) or a modification thereof, the applicant may request that a preapplication review be conducted by the Department of Community Development to consider the proposed project. Upon submittal of a preapplication, staff will evaluate the preapplication in light of applicable City regulations, indicate major problems, and identify additional required information. In addition, staff will make a determination as to the appropriateness of the use in the proposed location.~~

Section 8. Amendment. Title 9: Zoning, Chapter 6: Commercial, Office, and Industrial Zoning District: Section 3: Interpretations, is hereby amended by deleting the highlighted strike-through text, inserting the text in bold italics accordingly and relettering as required.

A. Uses shown in the matrix as "permitted" (P), are a permitted use ***by right*** in the applicable district; however, new construction or expansion of existing structures, or expansion of the area of use or operation, shall require ***review and site plan development approval by the city.*** ~~approval by the City Council through the site plan review process. Upon the determination of the Director of Community Development, any use that is identified as a more intensive use than the preceding approved use such that there would be a potential for a significant effect upon its surroundings shall be reviewed through the site plan review process.~~

B. Uses shown in the matrix as "permitted conditional use permit" (Pc) ***are may be*** permitted in the applicable district following review and approval ~~through the permitted conditional use permit (Pc) process~~ ***by the Board of Adjustment.*** This requirement shall apply to new uses, as well as ~~new construction and building expansions~~ ***the expansion of any use or change in operation.***

~~The use of a~~ A permitted conditional use permit (Pc) allows the City to regulate the intensity of development of a particular use, activity, or location. ~~The use of the A permitted conditional use permit (Pc) process~~ should not be seen as a means to prohibit uses but as a way to allow the City to secure more information concerning a specific use and its ***operational characteristics and apply conditions or restrictions on its operation as deemed necessary to limit impacts to surrounding properties and guard the safety, health and welfare of this community. It is further the intent of this chapter to allow flexibility and diversity of land uses.***

C. Each use is subject to all provisions of this title.

D. Where a proposed land use is not identified in this chapter, the Director of ~~Community Development~~ ***Services or their designee*** shall review the proposed use ~~when requested to do so by letter and,~~ based upon the characteristics of the use ***and operational intentions, to determine which of the uses listed in this chapter is most closely*** equivalent to that proposed ***and thus whether to classify the property land use as permitted (P) or as a permitted conditional use (Pc)***. The proposed use, if determined to be equivalent to an allowed use, shall be subject to review through the process indicated within the matrix. ~~It is further the intent of this chapter to allow flexibility and diversity of land uses.~~

~~E. Prior to submission of a permit application for either a site plan development permit, a permitted conditional use permit (Pc) or a modification thereof, the applicant may~~

~~request that a preapplication review be conducted by the Department of Community Development to consider the proposed project. Upon submittal of a preapplication, staff will evaluate the preapplication in light of applicable City regulations, indicate major problems, and identify additional required information. In addition, staff will make a determination as to the appropriateness of the use in the proposed location.~~

Section 9. Amendment. Title 9: Zoning, Chapter 7: Setback and Bulk Density Regulations: Section 3: Interpretations, is hereby amended by deleting the highlighted strike-through text and relettering as required.

- A. Any cell within the matrix that does not include a specific numerical designation or is labeled not applicable (n/a), indicates that the use is not considered an allowed use within that zoning district.
- B. Where the specific requirements of a proposed land use that is determined to be an acceptable use by the City Council, the Director of Community Development **or their designee** shall review the proposed use ~~when requested to do so by letter~~ and, based upon the characteristics of the use, determine which of the specific development regulations listed in this chapter is equivalent to that proposed.
- C. Individual manufactured housing units shall be allowed in all single-family detached zones. The unit shall be required to comply with all of the height and bulk requirements for that zone.

Section 10. Amendment. Title 9: Zoning, Chapter 9: Planned Unit Development District: Section 4: Intent, Subsection B and Subsection C is hereby amended by deleting the highlighted strike-through text, inserting the text in bold italics accordingly and relettering as required. All other items in current adopted section but not reflected below shall remain as is.

- B. In addition to meeting one of the above-mentioned goals, ~~the applicant shall prepare a statement of intent for the planned unit development or specific plan. The statement shall~~ **be prepared which gives** give specific direction as to the objective of the development.
- C. A reduction or modification of setbacks, bulk regulations, additional signage, or amendment of land uses shall not be the sole justification for a planned unit development or specific plan. The applicant must demonstrate how the proposed development is a creative, unique or efficient use of the land and that the typical zoning standard would prevent ~~an innovative positive~~ **a** development that will benefit the community.

Section 11. Amendment. Title 9: Zoning, Chapter 9: Planned Unit Development District: Section 5: Application Requirements, is hereby amended by deleting the section in its entirety.

Section 12. Amendment. Title 9: Zoning, Chapter 9: Planned Unit Development District: Section 6: Review Process, is hereby amended by deleting the highlighted strike-through text, inserting the text in bold italics accordingly and relettering as required.

- A. ~~Preapplication Meeting: Prior to the submittal of a planned unit or specific plan development, the applicant shall present to the Community Development Department a specific plan or sketch plan proposal. The Community Development Department shall schedule a development review team meeting. At this meeting, the applicant shall explain all of the elements required on the SP or PUD application checklist. As determined by the Community Development Director, additional preapplication materials and/or meetings may be required.~~

- ~~B. Submittal Of Application: Following the preapplication meeting, the applicant may submit a formal application with the required material to the Community Development Department. If the Community Development Director deems the application complete, the project is then placed on a review schedule. If deemed incomplete, the Community Development Director, or his designee, will notify the applicant in writing within twelve (12) business days, of receipt of the application and indicate what is necessary to make the submittal complete.~~
- C. Plan And Zoning Commission: The commission shall hold a public hearing and make a recommendation to the City Council on the proposed request. ~~The commission's recommendations shall include a determination if the proposed PUD or SP is in compliance with the Comprehensive Plan. If it is determined the proposal constitutes a substantial change to the Comprehensive Plan, an amendment to the Comprehensive Plan may be required. If the Planning and Zoning Commission recommends denial of a request for a PUD or SP development as proposed, and the applicant desires to revise or resubmit the PUD or SP, the applicant shall be subject to an additional processing fee.~~ If the applicant proceeds to Council with the commission's recommendation for denial, a super majority of the Council members must vote in the affirmative for the ordinance to pass.
- D. City Council: ~~Within a period of sixty (60) days after the City Council is in receipt of the written recommendation from the Planning and Zoning Commission,~~ ***Upon the Planning and Zoning Commission making a recommendation,*** the City Council shall hold a public hearing ***to consider and take action*** on the proposed PUD.
- E. Amendments To A Planned Unit Development/Specific Plan: Amendments to a PUD or specific plan shall be ~~granted if approved~~ ***considered*** by the City Council after ***receiving*** a recommendation by the Plan and Zoning Commission. It shall be the burden of the applicant to prove that the amendment meets the established intent of the existing PUD/ZCSP.

Section 13. Amendment. Title 9: Zoning, Chapter 10: Performance Standards: Section 3: Interpretations, is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics accordingly.

Where a question arises about the applicable standards to be applied for a proposed use as outlined in this chapter, the Director of ~~Community Development~~ ***Services or their designee*** shall review the proposed use ~~when requested to do so by letter and,~~ based upon the characteristics of the use, ***and*** determine which of the performance standards listed in this chapter are appropriate to that proposed use.

Section 14. Amendment. Title 9: Zoning, Chapter 10: Performance Standards: Section 4: Specific Use Regulations, Subsection J2 is hereby amended by deleting the highlighted strike-through text, inserting the text in bold italics accordingly and renumbering as required. All other items in current adopted section but not reflected below shall remain as is.

2. Architecture: All buildings shall be aesthetically pleasing and of a design compatible with surrounding buildings and the character of the community. Attention to architectural details such as the treatment of doors, windows, and the definition and treatment of the base, middle, and top of a building shall be paid to the public entrances of the building and those sides of the building within public view. Emphasis shall be placed on breaking up the mass of long blank walls. Accepted materials include brick, stone, wood, and limited usage of EIFS and metal, ~~unless the City Council or Board of Adjustment shall determine that the use of alternate building materials is acceptable.~~ ***unless the City Council, after***

review by the Planning and Zoning Commission determines that the use of alternate building materials and style enhances the physical appearance and accomplishes a compatible structure.

Section 15. Amendment. Title 9: Zoning, Chapter 11: PCP Professional Commerce Park District: Section 2: Use Regulations, is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics accordingly.

For the purpose of this section, it shall be recognized that the name of a use is not so important as the manner in which the use is accomplished. Further, in the interest of general community welfare, it is recognized that the community should be beautiful as well as financially prosperous, spacious as well as efficient; physically balanced as well as regulated. Therefore, it is considered impractical, if not impossible, to accurately enumerate those uses which would be beneficial or detrimental to the community; and that it is intended only that this district shall not be used indiscriminately to permit any use which might violate the general welfare of the community; but that it shall be restricted and confined to only those integrated professional-commerce uses which produce net gain to the community in both aesthetic and material quality.

Certain uses not considered professional-commerce and certain inherent physical characteristics are considered compatible or incompatible with the intent of this district as follows:

- A. Any enterprise or service which is specifically intended to augment, facilitate, be subsidiary and be accessory to the planned principal uses shall be permitted, providing such use shall be physically accomplished in an aesthetically compatible manner and shall comply with all restrictions or performance standards applicable to the principal uses.
- B. Multi-family residential buildings shall be allowed as standalone buildings in close proximity to existing employment and commercial areas, (generally meaning within acceptable walking distance), only when ~~two-thirds (2/3)~~ **three of the four** of the properties (***excluding roadways***) bordering the multi-family property have already been developed with office and/or commercial use buildings and when compliant with all performance standards specified within this chapter ~~and approved by the City Council~~. The total amount of multi-family residential use within a PCP Zoning District shall be secondary to the amount of commercial and office use within the PCP zoned area.
- C. Any retail commercial use shall be prohibited, except as provided in subsection A of this section.
- D. Any enterprise, regardless of professional-commerce category, which ***with the exception of signage*** cannot wholly enclose its functions within the principal structures or otherwise effectively conceal its functions from public observation, shall be prohibited except as otherwise identified in this title.

Section 16. Amendment. Title 9: Zoning, Chapter 11: PCP Professional Commerce Park District: Section 6: Commission Review and Council Approval Requirements, is hereby amended by deleting the section in its entirety.

Section 17. Amendment. Title 9: Zoning, Chapter 14: Accessory Structures: Section 5: General Provisions, Subsection E: Unsafe and Unlawful Accessory Structures is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics accordingly.

- E. Unsafe And Unlawful Accessory Structures:

1. Unsafe Accessory Structures: Notwithstanding the provisions of subsection ~~9-14-11-A3~~ of this chapter, if the ~~Director of Community Development~~ **city** finds that any accessory structure regulated herein is unsafe, unsecured, or a hazard to the public, ~~the Director of Community Development~~ **notice** shall **be** promptly given ~~written notice by mail or personal service~~ to the permittee thereof or to the owner of the premises on which the accessory structure is located. If the permittee or owner fails to remove or alter the structure so as to comply with the standards ~~herein set forth within seventy two (72) hours after receipt of such~~ **indicated within the** notice, such accessory structure may be removed or altered by the ~~Director of Community Development~~ **city** at the expense of the permittee or owner of the property upon which it is located.
2. Unlawful Accessory Structures: If the ~~Director of Community Development~~ **city** finds that any accessory structure regulated herein has been constructed in violation of the provisions of this chapter, they shall promptly give ~~written~~ notice to the owner of the premises on which the accessory structure is located. If the owner fails to remove or alter the structure so as to comply with the standards ~~identified within the notice~~ **herein set forth within seventy two (72) hours after receipt of such notice by mail or personal service to the permittee thereof or to the owner of premises on which the accessory structure is located**, such accessory structure may be removed or altered ~~to comply by the Director of Community Development~~ **by the city** at the expense of the owner of the property upon which it is located.

Section 18. Amendment. Title 9: Zoning, Chapter 16: Temporary Use Permits: Section 3: Application and Permit Processing is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics accordingly.

A temporary use permit shall be required for all temporary uses that relate to the stated purpose and intent of this chapter. A temporary use permit must be applied for and issued by the City prior to the commencement of any temporary use. ***It shall be unlawful for any person or organization to engage, sponsor, or participate in any temporary use described herein without having first applied for and obtained a permit in accordance with this chapter.*** Applications ~~must are to~~ be submitted not less than ten (10) calendar days prior to the proposed start date of the temporary use, unless the City decides to waive the deadline. The City reserves the right to reject any applications that have not been timely submitted to the City. ~~It shall be unlawful for any person or organization to engage, sponsor, or participate in any temporary use described herein without having first applied for and obtained a permit in accordance with this chapter. The Director of Development Services or designee may, from time to time, specify the form of the temporary use permit application. Applications for said temporary use permit shall be secured from the Development Services Department, who shall cause the application to be directed to all concerned City departments and divisions for review and comment.~~

Receiving approval of a temporary use permit from the City shall not preclude, supersede, circumvent, or waive the applicant's responsibility to obtain any additional permits, licenses, and approvals for other applicable local, State, and Federal regulations. The City reserves the right to impose special guidelines and restrictions for any temporary use based upon the nature of the proposed use, the proposed location of the use, and the anticipated attendance of the use. City staff shall be responsible for the issuance of temporary use permits.

Section 19. Amendment. Title 9: Zoning, Chapter 16: Temporary Use Permits: Section 10: Fees, is hereby amended by deleting the section in its entirety.

Section 20. Repealer. All ordinances of parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 21. 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 22. 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 23. 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 24. 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 June 19, 2023.

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 _____, 2023, and published in the Des Moines Register on _____, 2023.