

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: May 13, 2024

ITEM: Ordinance Amendment, Amend Title 9 (Zoning) to modify regulations pertaining to the application requirements for Temporary Garden Center Permits - City Initiated – AO-006369 -2024

RESOLUTION: Approval of Ordinance Amendment

Background: Development Services Staff is initiating an amendment to the chapter and section identified below in Title 9 (Zoning) to clarify regulations pertaining to the application submittal requirements for a Temporary Garden Center permit as currently regulated within City Code.

Specifically, the following changes are proposed with this request:

- Title 9: Zoning
 - Chapter 16: *Temporary Use Permits*, Section 7: *Specific Requirements*, Subsection J: *Retail Sales Of Landscape Nursery Materials* to clarify when the requirement that a hold harmless agreement needs to be executed with the city.

Staff Review & Comment:

- *Ordinance Amendment Intent:* Currently, City Code states that all temporary garden centers need to execute a hold harmless agreement with the city. This is not necessary. Garden centers under a Temporary Use Permit can only happen on private property; therefore, a Hold Harmless applicable to the City would be meaningless. For a seasonal garden center to occur on city property, special City Council approval would be required and the terms and agreements necessary would be obtained as part of that process. This clean up aligns the code with Staff's current procedure for temporary garden center permits on private property.

Outstanding Issues: There are no outstanding issues.

Planning and Zoning Commission Action:

Date: May 13, 2024

Vote:

Recommendation:

Planning and Zoning Commission Discussion:

City Council First Reading:

Date:

Vote:

Recommendation: Approve the Ordinance Amendment to City Code.

Lead Staff Member: Emani Brinkman

Approval Meeting Dates:

Planning & Zoning Commission	May 13, 2024
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	5/2/24
Date(s) of Mailed Notices	NA

Council Subcommittee Review (if applicable)

Subcommittee	Development & Planning			
Date Reviewed	4/15/24			
Recommendation	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Split <input type="checkbox"/>	No Discussion <input checked="" type="checkbox"/>

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION
NO. PZC-24-017

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, staff requests approval of an Ordinance Amendment to Title 9: *Zoning*, Chapter 16: *Temporary Use Permits*, Section 7: *Specific Requirements*, Subsection J: *Retail Sales Of Landscape Nursery Materials* to modify regulations pertaining to application requirements for Temporary Garden Center Permits on private property as currently regulated within City Code.

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-006369-2024).

PASSED AND ADOPTED on May 13, 2024.

Tina Shaw, 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 13, 2024, by the following vote:

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

ATTEST:

Recording Secretary

Prepared by: Emani Brinkman, 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, 2024, TITLE 9, (ZONING), CHAPTER 16 (TEMPORARY USE PERMITS)

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

Section 1. Amendment. Title 9: *Zoning*, Chapter 16: *Temporary Use Permits*, Section 7: *Specific Requirements*, Subsection J.9: *Retail Sales of Landscape Nursery Materials, Indemnification And Proof of Insurance* is hereby amended by deleting the text in highlighted strike-thru and adding the text in bold italics:

9. Indemnification And Proof Of Insurance: ***If the garden center is on public property,*** ~~the~~ owner or operator of any long term temporary use shall provide evidence of comprehensive general liability coverage and contractual liability insurance by an insurance company licensed to do business in the state of Iowa in the limits of at least one million dollars (\$1,000,000.00) for each personal injury accident and/or death; one million dollars (\$1,000,000.00) for each aggregate personal injury and/or death; and one million dollars (\$1,000,000.00) for each property damage accident. The evidence shall name the city as a coinsured and shall state that it cannot be canceled or materially altered without giving the city at least thirty (30) days' written notice by registered mail, return receipt requested.

If the garden center is on public property, ~~the~~ owner or operator of a temporary garden center, ~~or the property owner,~~ shall execute an agreement, acceptable to the city, which indemnifies and holds harmless the city from any and all liability, damages, claims, costs, expenses, interest, and reasonable attorney fees relating to the garden center and associated facilities on the property.

Section 2. Repealer. All ordinances of parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

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

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

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

Section 6. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

PASSED AND APPROVED by the City Council on

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 _____, 2024, and published in the Des Moines Register on _____, 2024.