

ORDINANCE NO. 13,910

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by repealing Sections 82-336, 102-320, 102-321, 102-322, 102-323, 102-324, 102-325, subsection (b) and (d) of Section 102-326, subsection (a) of Section 102-328, subsection (e) and (g) of Section 102-329, subsection (a), (k), (l), and (n) of Section 102-330 and subsection (b) of Section 102-609 thereof and enacting new Sections 82-336, 102-320, 102-321, 102-322, 102-323, 102-324, 102-325, subsection (b) and (d) of Section 102-326, subsection (a) of Section 102-328, subsection (e) and (g) of Section 102-329, subsection (a), (k), (l), and (n) of Section 102-330 and subsection (b) of Section 102-609, regarding the merger of the Skywalk Commission into the Urban Renewal Board.

Be It Ordained by the City Council of the
City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, is hereby amended by repealing Sections 82-336, 102-320, 102-321, 102-322, 102-323, 102-324, 102-325, subsection (b) and (d) of Section 102-326, subsection (a) of Section 102-328, subsection (e) and (g) of Section 102-329, subsection (a), (k), (l), and (n) of Section 102-330 and subsection (b) of Section 102-609 thereof and enacting new Sections 82-336, 102-320, 102-321, 102-322, 102-323, 102-324, 102-325, subsection (b) and (d) of Section 102-326, subsection (a) of Section 102-328, subsection (e) and (g) of Section 102-329, subsection (a), (k), (l), and (n) of Section 102-330 and subsection (b) of Section 102-609, regarding the merger of the Skywalk Commission into the Urban Renewal Board, as follows:

Sec. 82-336. Created; composition; appointments.

(a) There is created in and for the city an urban renewal board, which shall be an advisory board composed of ten members of which seven shall be at large members and three shall be representative members. The seven at

large members of the board shall be persons who, because of their business and professional training and experience, are qualified to advise the city council as to appropriate programs for the development or rehabilitation of blighted or deteriorating areas in the city and the operation and extension of the skywalk system. One representative member must own an interest in property containing a skywalk corridor, one representative member must own an interest in a business which leases property containing a skywalk corridor, and one representative member must be a member of the Des Moines Skywalk Association.

(b) All appointments shall be for a term of three years. Each member of the city council may recommend a candidate for one at large position on the board. The mayor shall recommend candidates for the three representative positions.

(c) The members of the former skywalk commission shall be members of the urban

renewal board until the date their term on the skywalk commission was to have expired.

Sec. 102-320. Urban renewal board.

(a) The powers and duties formerly held by the skywalk commission under this code have been transferred to the urban renewal board created by section 82-336. The membership of the urban renewal board has been expanded to include representatives with an interest in the safe, efficient and orderly operation of the skywalk system.

(b) The urban renewal board is hereby designated as the successor to the skywalk commission and shall have all those powers and duties formerly held by the skywalk commission under the various Skywalk Agreements between the city and the owners, tenants and occupants of property within the skywalk system.

Sec. 102-321. Advisory powers of urban renewal board.

The urban renewal board shall review and advise the city council on the following:

(1) Any proposed amendment to this article;

(2) Any proposed amendment to any other ordinance that may affect the skywalk system;

(3) Any proposed amendment to the skywalk system plan map or the official skywalk map;

(4) Any proposed location or change in location of a skywalk corridor or vertical access facility;

(5) The policy and design standards for skywalk bridges;

(6) Any request to extend the three-year period for reconstruction of a destroyed skywalk corridor; and

(7) Such other matters as it determines should be brought to the city council's attention.

Sec. 102-322. Decision powers of urban renewal board.

For the purpose of this article, the urban renewal board shall:

(1) Establish minimum standards for operation, maintenance and repair of the skywalk system.

The term "operation" shall include heating, cooling, lighting, cleaning and providing surveillance for the skywalk system.

(2) Establish the policy and approve the design for the skywalk logo, skywalk maps and route directories, skywalk directional signs and store and building name signs and building directories.

(3) Approve erection of sculpture, plantings, or supports for public announcements or artwork or other amenities in any part of a nodal area on a public easement, the dimensions of which exceed the minimum skywalk corridor dimensions.

(4) Approve or disapprove a request by any person to change the hours of operation for any portion of the skywalk system, except vertical access facilities, provided such change does not reduce the hours that portion of the skywalk system is open below the minimum hours provided in this article. A request to so change the hours a portion of the skywalk system is open signed by all private

property interests on the portion of the skywalk system affected by the change shall be deemed granted upon notice to the urban renewal board. A request to extend the hours a portion of the skywalk system shall remain open shall be granted upon evidence that there will be substantial usage of that portion of the system during such hours, provided those persons requesting such extension of hours present the board with an executed agreement providing for payment of all operation and repair costs on that portion of skywalk system during such hours. The urban renewal board may approve or may disapprove subject to such reasonable conditions as are necessary to protect the interests of other persons along the affected portion of the skywalk system or may disapprove a request to change hours of operation, but if the urban renewal board does not approve subject to condition or disapproves a proposed change in hours within 15 days of the date such request is filed with the urban renewal board, the proposed change shall be deemed approved.

(5) Upon its own notice or upon the complaint of any person, determine whether or not a skywalk corridor constructed or otherwise provided by a private property interest conforms to the minimum design standards for skywalk corridors contained in this article. Any private property interest may submit plans for the construction or other provision of a skywalk corridor to the urban renewal board for determination as to whether or not such plans conform to such minimum design standards.

Sec. 102-323. Variances.

(a) The urban renewal board shall approve or approve with such reasonable conditions as the board may determine or disapprove a request for a variance from the requirement for minimum clearance of a skywalk corridor or a skywalk bridge over an alley, provided that the board may grant such variance only when it is satisfied under the evidence before it that:

(1) Because of exceptional topographical conditions or other extraordinary

or exceptional circumstances, the strict application of the terms of this article actually prohibits connection of a property to the skywalk system in a manner reasonably similar to that of other property in the skywalk district;

(2) The plight in question is due to unique circumstances shown by the evidence and is not of the making of any person with a property interest in any property abutting on such skywalk corridor or skywalk bridge; and

(3) The requested variation shall be in harmony with the intended spirit and purpose of this article, provided, further, that no variance shall be granted which provides for a minimum clearance of a skywalk corridor or skywalk bridge over an alley of less than 13 feet eight inches over the highest point of the surface of such alley.

(b) The applicant for such variance shall have the burden to present evidence and to prove that the conditions for granting a variance have been satisfied.

(c) The decision on an application for variance shall be made after a public hearing. Notice of such public hearing shall be given at least ten days prior to the date of the public hearing by publication once in a newspaper of general circulation in the city and by registered or certified mail addressed to the last known address of all persons with a property interest in each property abutting on such alley. The applicant shall pay the city an application fee of \$5.00 and the actual costs of notice of the public hearing.

(d) Within ten days after the date the urban renewal board renders its decision, any person aggrieved by such decision may appeal to the city council by written notice of such appeal directed to the city clerk, the urban renewal board and all persons with a property interest in each property abutting on such alley. The city council shall consider such appeal at a public hearing held after at least ten days' notice given in the same manner as for the original hearing before the urban

renewal board. The appellant shall pay the city a fee of \$5.00 and the actual costs of notice of the public hearing. The city council may grant or deny a variance on the same basis as the urban renewal board.

Sec. 102-324. Changes of hours, conditions.

When any portion of the skywalk system extends to serve only a single building or business, and no further, and when the building or business served is not regularly open to the public throughout the minimum hours of operation for the skywalk system provided in this article, the urban renewal board, with the written consent of all private property interests associated with the building or business, may approve a reduction in the hours of operation of that portion of the skywalk system serving only that single building or business, so that portion of the skywalk system shall be closed for public pedestrian travel during all or a portion of the hours in which the building or business is not regularly open to the public. However, in no event shall the urban renewal board approve such a reduction in the minimum hours of operation so as to close the affected portion of the skywalk system during any of the hours in which the building or business is regularly open. Any associated private property interest at any time may revoke its consent to such a reduction in hours by filing a written notice of revocation with the urban renewal board. Upon receipt by the urban renewal board of such notice from any associated private property interest, the prior approval granted by the board to the reduction in hours shall be deemed revoked, and the affected portion of the skywalk system shall be required to remain open in

accordance with the minimum hours of operation for the skywalk system provided in this article.

Sec. 102-325. Arbitration.

(a) Any person aggrieved by a decision of the urban renewal board made under a decision power granted it in section 102-322 of this article may request binding arbitration by a written request filed with the secretary of the board within ten days after receipt of the decision. Thereafter, within five days, the urban renewal board and the party requesting arbitration shall each appoint one arbitrator. Within five days of their mutual appointment, those two arbitrators shall select a third arbitrator who shall chair the arbitration panel. The arbitration panel shall schedule a public hearing within ten days of such final selection, and the city clerk shall publish notice of the hearing and shall notify affected property owners and tenants by mail. Any interested person may present evidence or argument at the hearing. The arbitration panel shall have the power to reach the same decisions pursuant to the same standards as the urban

renewal board. If the majority of the arbitration panel does not render its written decision and reasons within ten days of its hearing, the decision of the urban renewal board shall prevail. Each party shall pay for the costs of the arbitrator it appoints, and the arbitration panel shall apportion all additional costs of arbitration as justice warrants.

(b) For purposes of this section, the city manager, on behalf of the city, shall be a person who may request arbitration or appeal of a decision of the urban renewal board to the same extent that any other person can.

Sec. 102-326. Application to be included in skywalk system.

(b) The city council shall receive and consider an application for the development of a portion of or connection to the skywalk system from an applicant who effectively represents all properties, except those owned by the city and those already traversed by a portion of the skywalk system,

to be traversed by the proposed portion of or connection to the skywalk system with the power of attorney to commit such properties to the skywalk usages and restrictions provided by this article. The city council shall receive the advice of the urban renewal board before acting on the application.

(d) The city council shall grant the application to construct a portion of the skywalk system and shall construct any necessary bridges over public rights-of-way at public expense according to specifications on file in the city clerk's office and shall grant the application to construct a connection to the skywalk system if:

(1) The applicant:

a.
Demonstrates that the proposed portion of the skywalk system or connection thereto is part of the

skywalk system
as shown on
the skywalk
system plan
map or as
included on
the map by
amendment or
is a
connection
thereto
allowed by
section 102-
319 or by
subsection
102-329(1) of
this article;

b. Grants the
city at no
cost an
easement for
public
pedestrian
travel through
and over all
skywalk
corridors
across such
private
property and,
further,
grants the
city the right
to an easement
for public
pedestrian
travel through
and over any
future skywalk
corridor
across such
property that
is or may
become
necessary to
extend the

skywalk system
beyond such
property to an
adjacent
property,
which easement
shall come
into being at
such time as
the city
council
determines it
is necessary
for such
extension of
the skywalk
system. Such
easements
shall be
deemed
dedicated to
public
pedestrian
travel only
during the
hours that
such skywalk
corridors are
open according
to the terms
of this
article. Each
such easement
for a skywalk
corridor shall
provide as
direct a
pathway across
such property
to the skywalk
system
connections to
other property
as is
reasonable and
practical. The
location of

each such
easement shall
be the
location
approved by
the city
council. Such
private
property
interests
shall have the
right to
change the
location of a
skywalk
corridor
easement upon
notification
to and
approval by
city council
upon the
advice of the
urban renewal
board, which
approval shall
not be
unreasonably
withheld, and
upon
completion of
construction
of such
relocated
portions of
the skywalk
system;

c. Signs a
skywalk
agreement with
the city to
construct all
portions of or
connections to
the skywalk
system to be

built at
private
expense
according to
minimum design
standards for
the skywalk
system and to
abide by all
terms and
conditions of
the skywalk
agreement and
all terms and
conditions of
this article
as are in
effect on the
date such
skywalk
agreement is
made; and

(2) The city council determines that the city can finance its obligations or, in the alternative, if the applicant agrees that the city can perform its obligations or any part of them as soon as the city council determines it can finance them.

Sec. 102-328. Obligations of private property interests.

(a) In addition to granting the easements required by section 102-326 of this article, the owners of any private property interest traversed by the skywalk system and the skywalk-level tenants of such property (referred to in this section as "the private property

interests") and their successors or assigns:

(1) May grant the city at no cost an easement for skywalk purposes for so much of a nodal area as exceeds the skywalk corridor easement. The location of these easements shall be as approved by the city council and shall be shown on the official skywalk map. The private property interests shall have the right to change the location of such nodal area easements upon notification to and approval by the city council upon the advice of the urban renewal board, which approval shall not be unreasonably

withheld, and upon construction of the relocated portions of the skywalk system. The private property interests shall have the right to terminate any such nodal area easement upon three weeks' written notice to the city council.

(2) Shall construct or otherwise provide at their own expense all portions of the skywalk system traversing their property and shall construct or provide such skywalk system according to the minimum design standards and criteria of this article.

(3) If the portion of the skywalk system traversing

private
property is so
damaged or
destroyed as
to be
unusable,
shall be
responsible
for providing
either an
immediate
temporary
route around
the damaged
portion or
construction
of a temporary
route to the
ground level
and a
temporary
route back to
the skywalk
system at the
other end of
the damaged
portion and
shall rebuild
or otherwise
replace the
damaged
portion of the
skywalk system
as soon as is
reasonable,
but in any
event within
three years,
unless the
city council
for good cause
shown extends
the three-year
period,
subject to
such
reasonable

conditions as
it may impose,
for such
reasonable
period of time
as is
necessary to
complete the
repairs or
replacement.
Any person
aggrieved by
the decision
of the city
council may
request
binding
arbitration by
the same
procedure as
provided in
subsection
102-325 of
this article.

(4) Shall be
responsible
for the costs
of operation,
maintenance
and repair of
that portion
of the skywalk
system
traversing
their private
property and
shall be
responsible
for that share
of such costs
for each
skywalk bridge
connected to
their private
property as is
determined by

the following
ratio: $1/N$,
where N equals
the number of
private
properties
connected to
such skywalk
bridge at any
given time
which are
subject to a
skywalk
agreement then
in existence,
all in
conformance to
the operation,
maintenance
and repair
standards set
by the urban
renewal board.
If a
particular
private
property
interest fails
to fulfill its
responsibiliti
es for
operation,
maintenance or
repair after
notice to do
so from the
city, the city
shall secure
such
operation,
maintenance or
repair and
assess the
cost of
performing
such
operation,

maintenance or
repair against
the private
property upon
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If, as a result of such surveillance or otherwise, a private property interest has knowledge of a violation of law, such private property interest, in its sole discretion, either

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Sec. 102-329. Development criteria.

(e) The skywalk system shall be maintained free of all obstructions, except that sculpture, plantings, supports for public announcements or artworks or other

amenities, as approved by the urban renewal board, may be erected in those portions of the nodal areas, skywalk corridors or skywalk bridges which exceed 14 feet in width and which have been dedicated for public skywalk purposes. Where a public utility contracts to provide public communication equipment and service in one or more such locations, the owner or lessee of such location shall be entitled to the proceeds from such contract.

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(g) The only signs that will be allowed in skywalk corridors and skywalk bridges are skywalk logos, skywalk map and route directories, skywalk directional signs and skywalk building identification signs as approved by the urban renewal board. The private property interests shall be allowed to erect store or building name signs and building directories

on the sidewalls of skywalk corridors with approval by the urban renewal board and shall be allowed to erect any signs they wish on the private property adjacent to the skywalk corridors, so long as these signs are not so similar to skywalk graphics as to cause confusion.

Sec. 102-330. Standards of usage.

(a) The skywalk corridors and skywalk bridges shall be open for public pedestrian travel between the hours of 6:00 a.m. and 2:00 a.m. seven days a week, except that the skywalk corridors and skywalk bridges or portions thereof shall be open for such additional hours as the urban renewal board may approve in accordance with subsection 102-322(4) of this article and except that portions of the skywalk corridors and skywalk bridges shall be open for such reduced hours as the urban renewal board may approve in accordance with subsection 102-324 of this article. The vertical access facilities shall be open

during the regular building or business hours of the building or business in which they are located, but not in excess of the hours the skywalk corridors they serve are open.

(k) No person shall erect any advertising or signs, other than official skywalk system signs approved by the urban renewal board, in any skywalk corridor or skywalk bridge, except that store or building name signs or building directories may be permitted by the urban renewal board on the sidewalls of skywalk corridors, and except that temporary street banner signs announcing a public event or service attached to the exterior of skywalk bridges may be permitted providing that specific approval is granted under regulations established by the city council. No person shall erect any sign on property adjacent to the skywalk system that is so similar to an official skywalk sign or graphics as to cause confusion.

(l) No person shall be upon or remain upon any skywalk corridor or skywalk bridge roof without the authorization of the urban renewal board unless use of such roof is for a bona fide maintenance activity or emergency.

(n) No person shall enter upon any portion of the skywalk system, its skywalk bridges or corridors and conduct activities thereon in disregard of signs or posted notices as promulgated or authorized by the urban renewal board.

Sec. 102-609. Newsracks within skywalk system.

(b) Enclosed newsracks within the skywalk system shall be placed only within modular shell units. Each modular shell unit shall contain space for insertion of at least two separate enclosed newsracks, with one being installed above the other, and shall be constructed with unenclosed newsracks,

for the free circulation of newspapers or news periodicals, attached to the exterior of each such unit. The city shall be responsible for installing and maintaining all such modular shell units, including the attached unenclosed newsracks, and the parties leasing enclosed newsrack spaces within such units shall be responsible for installing and maintaining their enclosed newsracks within such units. Modular shell units and newsracks shall comply with particular written specifications relating to the color, dimensions and construction thereof, which specifications shall be developed by the city engineer and approved by the urban renewal board.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

Preston Daniels, Mayor

Attest:

I, Donna Boetel-Baker, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 01-249), passed by the City Council of said City at a meeting held January 22, 2001, signed by the Mayor on January 22, 2001, and published as provided by law in the Business Record on February 5, 2001. Authorized by Publication Order No. 1550.

Donna Boetel-Baker, MMC, City Clerk