

ORDINANCE NO. 14,135

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, as heretofore amended, by repealing Section 58-57, subsection (c) of Section 58-58, Section 58-59, Section 58-60, Section 58-61, Section 58-62, subsection (a) of Section 58-63, subsection (c) of Section 58-64 and Section 58-65 thereof, and enacting a new Section 58-57, subsection (c) of Section 58-58, Section 58-59, Section 58-60, Section 58-61, Section 58-62, subsection (a) of Section 58-63, subsection (c) of Section 58-64 and Section 58-65, and by adding and enacting a new Section 58-55 regarding the designation and alteration of landmarks and landmark sites.

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, be and is hereby amended by repealing Section 58-57, subsection (a) of Section 58-58, Section 58-59, Section 58-60, Section 58-61, Section 58-62, subsection (a) of Section 58-63, subsection (c) of Section 58-64 and Section 58-65 thereof, and enacting a new Section 58-57, subsection (a) of Section 58-58, Section 58-59, Section 58-60, Section 58-61, Section 58-62, subsection (a) of Section 58-63, subsection (c) of Section 58-64 and Section 58-65, and by adding and enacting a new Section 58-55 regarding the designation and alteration of landmarks and landmark sites, as follows:

Sec. 58-55. Landmark review board / historic district commission.

(a) The historic district commission shall consider the nomination of landmarks and landmark sites and the alteration of landmarks and landmark sites located within locally designated historic districts.

(b) A landmark review board is hereby created to consider the nomination of landmarks and landmark sites and the alteration of landmarks and landmark sites located outside locally designated historic districts. The landmark review board shall be a twenty one (21) member board consisting of the membership of the urban design review board and the membership of the historic district commission. The chair and vice-chair of the urban design review board shall serve as the chair and vice-chair respectively of the landmark review board. The meetings of the landmark review board shall be held at the call of the community development director, or when requested by the chair and a member of the urban design review board and a member of the historic district commission. The community development director shall call meetings of the landmark review board as necessary for the board to perform its duties under this article.

Sec. 58-57. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alteration means any action to change, modify, reconstruct, remove or demolish any exterior features of an existing structure. For the purpose of this article, ordinary maintenance and repair to correct any deterioration, decay or damage to a structure and to restore the structure as nearly as practicable to its condition prior to such deterioration, decay or damage are excluded from the definition of the term "alteration," provided such work does not involve a change in type of building materials. For the purposes of this article, changes made in the type and design of storm windows and in the color of the outer surfaces of a structure are considered to be ordinary maintenance and repair.

Applicant means the party making application for a certificate of appropriateness.

Board means the landmark review board created by section 58-55.

Capable of earning a reasonable return means having the capacity under reasonably efficient and prudent management of earning a reasonable return.

Certificate of appropriateness means a certificate authorizing plans for alterations, construction, removal or demolition of a landmark or an improvement on a landmark site.

Commission means the historic district commission.

Construction means the act of building, erecting or placing any structure on a site.

Exterior features means the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. For an outdoor advertising sign, the term "exterior features" means the style, material, size and location of the sign.

Historic district means an area designated by the city council as a historic district pursuant to article 2 of this chapter.

Improvement means any building, structure, place, parking facility, fence, gate, wall, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

Improvement parcel means a unit of property which includes a physical betterment constituting an improvement and the land embracing the site thereof, which is treated as a single entity for the purpose of levying real estate taxes. However, the term "improvement parcel" shall also include any unimproved area of land which is treated as a single entity for such tax purposes.

Landmark means any improvement which has a special character or special historical or aesthetic interests or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated as a landmark pursuant to this article.

Landmark site means a parcel of land of historic significance which has substantial value in tracing the history of humans or upon which an historic event has occurred and which has been designated as a landmark site under this article, or an improvement parcel or part thereof on which is situated a landmark and any abutting improvement parcel or part thereof used as and constituting part of the premises on which the landmark is situated.

Notice to proceed means authorization by the city council for work which would require a certificate of appropriateness, but which work does not meet the applicable standards for issuance of a certificate of appropriateness.

Owner means any person having such right to, title to, or interest in any improvement so as to be legally entitled to, upon obtaining the required permits and approvals from the city's agencies having jurisdiction over building construction, to perform with respect to such property any construction, alteration, removal, demolition or other work.

Person in charge means the person possessed of the freehold of an improvement or parcel of land or a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person directly or indirectly in control of an improvement or parcel of land.

Principal improvement or building means any primary building upon a landmark site or improvement parcel.

Structure means anything constructed or erected with a fixed location on the ground or attached to something with a fixed location on the ground. Among other things, structures include buildings, walls, fences, gates, towers, mobile homes, billboards, poster panels, utility poles, streets, sidewalks, alleys and hard-surfaced parking areas. For the purposes of this article, freestanding flagpoles and yard lights are excluded from the definition of the term "structure."

Sec. 58-58. Designation criteria.

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- (c) The landmark review board may adopt specific operating guidelines for landmark and landmark site designations, providing such are in conformity with this article.

Sec. 58-59. Application for designation.

Any person, group of persons, or association may request a designation of a landmark or a landmark site by submitting an application for such designation to the community development department on a form furnished by the department. The historic district commission, in addition,

may, on its own motion, initiate proceedings for the designation of a landmark or a landmark site.

Sec. 58-60. Procedures.

(a) The historic district commission shall consider the nomination of landmarks and landmark sites located within historic districts, and make a report and recommendation on such nomination to the city plan and zoning commission and city council as provided below. The landmark review board shall consider the nomination of landmarks and landmark sites located outside historic districts and make a report and recommendation on such nomination to the city plan and zoning commission and city council as provided below.

(b) Notice that an application for designation of a landmark or landmark site is being considered shall be given to the owner of the parcel on which the proposed landmark is situated or which is part of the proposed landmark site in accordance with the following:

(1) Such notice shall be served by certified mail, addressed to the owner at his or her last known address as such appears in the records of the county treasurer's office, or if there is no name on such records, such notice may be served by regular mail addressed to "owner" at the street address of the property in question.

(2) Such owner shall have the right to confer with the historic district commission or landmark review board, as applicable, prior to final action by the commission or board on the application.

(3) The historic district commission or landmark review board, as applicable, may, in addition, hold the public hearing of the proposed designation by giving notice as required by law.

(b) After such investigation by the historic district commission or landmark review board as is deemed necessary, but in no case more than 60 days after the receipt of the complete application, the application for designation shall be recommended for approval or disapproval. Such recommendation shall be in writing and signed by the chair of the historic district commission or landmark review board, as applicable, and shall state the reasons for recommending approval or disapproval. The recommendation may limit itself to the proposed landmark or landmark site as described in the application or may include modifications thereof. Such recommendation shall be forwarded to and filed with the plan and zoning commission, within five days after making such recommendation.

(c) Upon receipt of such recommendation, the plan and zoning commission shall schedule a public hearing at a specific place, date and time, not more than 30 days after such receipt, by giving notice as required by law.

(d) Within 30 days after the public hearing, the plan and zoning commission shall forward such application to the city council, together with the recommendation of the historic district commission or landmark review board. The plan and zoning commission may adopt the recommendation of the historic district commission or landmark review board as its own or may prepare a written recommendation of its own. The plan and zoning commission may limit itself to the proposed landmark or landmark site or may include modifications thereof. If the modification requires an additional public hearing, the plan and zoning commission shall hold such hearing before forwarding the application to the city council.

(e) Upon receipt of such recommendation, the council shall schedule a public hearing to consider the recommendation at a specific place, date and time, not more than 30 days after such receipt, by giving notice as required by law.

(f) The city council, after public hearing, may approve, approve with modification, or disapprove the recommendation of the plan and zoning commission by a majority vote of its membership. If the plan and zoning commission shall have failed to act within the time limit set forth in this section, the city council may, nevertheless, approve, approve with modification, or disapprove the proposed landmark or landmark site as originally proposed or modified by a majority vote of its membership.

Sec. 58-61. Effect of approval of designation.

(a) Following a designation of a landmark or landmark site, the city clerk shall immediately file the description of such landmark or landmark site with the community development department and shall thereafter record the description of such landmark or landmark site in the office of the county recorder.

(b) Any designation made under this article shall be in full force and effect from and after the date of recording.

(c) A landmark or landmark site designation may be amended or rescinded by the same process as for the designation of a landmark. The historic district commission, landmark review board, and plan and zoning commission shall have the same powers to recommend disapproval of an amendment or rescission of a designation as a landmark or as a landmark site as they had to recommend disapproval of an original designation as a landmark or as a landmark site.

(d) If agreed to by the owner, at such time as a landmark or landmark site has been properly recorded, the city council may cause to be prepared and erected on such property, at city expense, a suitable plaque declaring that such property is a landmark or landmark site. Such plaque shall be so placed as to be easily visible to passing pedestrians. If a landmark, the plaque shall state the accepted name of the landmark, the date of its construction, and other information deemed proper by the city council. If a landmark site which is not the site of a landmark building, such plaque shall state the common name of the site and such other information deemed appropriate by the city council.

(e) In addition to those duties already specified in this article, the historic district commission and landmark review board shall individually and collectively:

(1) Actively work for the passage of enabling legislation which would permit the granting of full or partial tax exemptions to properties it has designated under this article in order to encourage landmark owners to assist in carrying out the intent of this article.

(2) Work closely with the state historic preservation officer in attempting to include such properties designated as landmark or landmark sites on the National Register of Historic Places.

(3) Work for the continuing education of the citizens of the city about the historic heritage of this city and the landmark and landmark sites designated under this article.

(4) Solicit funds for the purpose of landmark preservation in the city. Such funds, upon acceptance by the city council, shall be placed in a special city account for such purpose.

Sec. 58-62. Construction, reconstruction, demolition and exterior alteration; certificate of appropriateness.

(a) No owner or person in charge of a landmark or landmark site shall reconstruct, alter, or demolish all or any part of the exterior of such property or construct any improvement upon such designated property or cause or permit any such work to be performed upon such property until a certificate of appropriateness has been applied for and obtained for such work pursuant to this section. The community development department shall not issue a permit for any such work until a certificate of appropriateness for such work is first obtained.

(b) The historic district commission shall consider applications for the alteration of landmarks and landmark sites located within historic districts, and make a decision on such matters as provided below. The landmark review board shall consider applications for the alteration of landmarks and landmark sites located outside historic districts and make a report and recommendation on such applications to the city council as provided below.

(c) All applications concerning landmarks located within a historic district received before the closing date to be established by the commission, shall be considered by the commission at its next regularly scheduled meeting. All applications concerning

landmarks located outside a historic district shall be considered by the landmark review board within 45 days.

(d) In acting upon such application, the commission or the board and city council as applicable, shall consider:

(1) Design guidelines, standards and criteria developed by the historic district commission and approved by the city council, pursuant to subsection 58-30(e)(2) of this Code.

(2) Standards for rehabilitation promulgated by the Secretary of the Interior.

(3) The comprehensive plan for the city and any adopted urban renewal plan for the area.

(4) For an application respecting construction, reconstruction or exterior alteration other than on the principal improvement, the proposed work would adversely change, destroy or affect any exterior feature of the improvement upon which such work is being done, or, if it is new construction, it would lack harmony with the landmark site and whether the proposed work would be appropriate for and consistent with the purpose of this article.

(5) For an application respecting new construction of principal improvements upon a landmark site, the proposed work would adversely affect the aesthetic quality of the site or lack harmony with the external appearance of other improvements on the site or upon neighboring sites.

(6) For an application respecting demolition of all or part of a landmark or an improvement within

a landmark site, the condition of the landmark or improvement within a landmark site is determined to be dangerous to life, health or property, and such condition cannot be abated without demolishing such landmark or improvement within a landmark site or part thereof.

(e) *Applications within historic districts.* Applications involving the alteration of a landmark or landmark site within a historic district shall be approved, approved with modification or denied by the historic district commission.

(1) If an application is approved or approved with modification by the commission, the community development department shall thereafter issue a certificate of appropriateness. The findings of the commission on each application shall be contained in a written resolution setting forth the full reason for its decision and the vote of each member participating therein. Such resolution shall be placed on file for public inspection in the office of the community development department within five business days after the meeting at which the application was acted upon. A copy of such resolution shall be mailed or delivered to the applicant.

(2) Any party aggrieved by any decision of the historic district commission may appeal the commission's action to the city council. Such an appeal must be in writing and must be filed with the city clerk no later than ten business days after the filing of the resolution mentioned in subsection (d) of this section, unless the city council waives such ten-day requirement upon a showing of good and

sufficient cause. The city council shall fix a reasonable time for a public hearing on the appeal, shall give public notice thereof as well as due notice to the applicant and to the appellant, if different from the applicant, and shall decide the appeal within a reasonable time. At such hearing any party may appear in person or by agent or attorney. In deciding such appeal, the city council shall consider whether the commission has exercised its powers and followed the guidelines established by law and ordinance, and whether the commission's action was patently arbitrary or capricious. A vote of six-sevenths of the membership of the city council shall be required to reverse any decision of the commission.

(f) *Applications outside historic districts.* Applications involving the alteration of a landmark or landmark site outside a historic district shall be recommended for approval, approval with modification or denial by the landmark review board. The board shall make a report and recommendation to the city council setting forth the vote of each member participating therein. Upon receipt of the recommendation of the landmark review board, the city council shall approve, approve with modifications or deny the application

(g) If not satisfied with the decision of the city council, any party to the appeal before the council may petition the county district court for a writ of certiorari within 30 days after the council's decision.

(h) Certificates of appropriateness issued on the basis of approved plans and applications authorize only the construction or alteration set forth in such approved plans and applications and no other construction or alteration. It shall be the duty of the community development department to inspect from time to time any work performed pursuant to such a certificate to ensure compliance with the requirements of such certificate, regardless of whether or not a

building permit is required for such work. If it is found that such work is not being carried out in accordance with the certificate, the community development department shall issue a stop work order. Any construction or alteration at variance with that authorized shall be deemed a violation of this article and shall be punishable as provided in section 58-67.

Sec. 58-63. Determination of unnecessary hardship.

(a) In addition to the appeal rights granted to an appellant pursuant to section 58-62 of this article, if an application for a certificate of appropriateness is denied, or approved subject to conditions not acceptable to the applicant, the applicant may appeal to the city council for a notice to proceed if the applicant establishes to the satisfaction of the council that there is unnecessary hardship in the strict application of the provisions of this article.

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Sec. 58-64. Maintenance and repair.

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(c) Such governmental enforcement agency shall give the historic district commission or landmark review board, as applicable, 30 days' prior notice of any proposed order or direction which affects or may affect the exterior appearance of the landmark. The commission or board shall have the power to require that the work not materially change the exterior appearance of the landmark or improvement on the landmark site where the danger of life, health or property may be abated without detracting from the exterior appearance of same.

Sec. 58-65. Extension of time for action.

Whenever, under this article, the historic district commission, landmark review board, or the plan and zoning commission is required within a prescribed period of time to make any determination or perform any act in relation to any application for designation or for a certificate of appropriateness, the applicant may extend such period of time by his or her written consent filed with the community development department.

Sec. 2. This ordinance shall be in full force and effect from and after the later of its passage and publication as provided by law, or October 8, 2002.

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

Preston A. Daniels, Mayor

Attest:

I, Donna V. 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. 02-2185), passed by the City Council of said City at a meeting held September 9, 2002 signed by the Mayor on September 9, 2002 and published as provided by law in the Business Record on February 24, 2003. Authorized by Publication Order No. 3565.

Donna V. Boetel-Baker, City Clerk