

ORDINANCE NO. 14,529

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 Sections 134-1326, 134-1327 and 134-1328 thereof, and enacting new Sections 134-1326, 134-1327 and 134-1328, regarding the uses that may be allowed by a Special Permit issued by the Zoning Board of Adjustment, and the conditions and procedures for issuance such Special Permits.

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, as amended by Ordinance No. 13,154 passed October 21, 2002, be and is hereby amended by repealing Sections 134-1326, 134-1327 and 134-1328 thereof, and enacting new Sections 134-1326, 134-1327 and 134-1328, regarding the uses that may be allowed by a Special Permit issued by the Zoning Board of Adjustment, and the conditions and procedures for issuance such Special Permits, as follows:

DIVISION 3. SPECIAL PERMITS

Sec. 134-1326. Uses allowed by special permit.

The zoning board of adjustment may, by special permit after public hearing, authorize the location of any of the following buildings or uses in any district; provided, however, that no such special permit shall be granted authorizing any building or use in an FW district.

- (1) Any use of structures or land by any department of the city, township, county, state or federal government.
- (2) Any use of a building located on public grounds, provided such use is under contract with a government entity and is intended to serve the users of the public grounds.
- (3) Community buildings or recreation fields.
- (4) Hospitals; hospices; nonprofit fraternal institutions, provided they are used solely for fraternal purposes; and institutions of an educational, religious, philanthropic or eleemosynary character.
- (5) Preschools.
- (6) Cemeteries or columbaria; a funeral home may be included in a cemetery of at least five acres.
- (7) Private golf courses, country clubs, and tennis or swimming clubs.
- (8) Bus terminals.
- (9) Pet cemeteries.
- (10) Home occupations, subject to the following requirements:
 - a. The occupation shall be clearly incidental to or secondary to the residential use of the premises .

- b. No more than two non-resident individuals shall be engaged or employed in the business upon the premises.
 - c. One sign advertising the business is allowed, attached to the residence. Such sign not to exceed one square foot in total area. Free-standing signs are not permitted.
 - d. The occupation shall not cause or produce noise, vibration, smoke, dust, odor, or heat or any other impact of a type or quantity not in keeping with the residential character of the neighborhood.
 - e. No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted material of a type or quantity not ordinarily used for household purposes shall be used or stored on the premises, and the applicant must identify the proper disposition of any hazardous waste. No activity will be allowed which is hazardous to the public health, safety or welfare.
 - f. There is no outside operation, storage or display of materials or products.
 - g. Not more than one-half of the area of one floor level of the dwelling or accessory building shall be used for such business, including the storage of materials or products.
 - h. No alteration of the residential appearance of the premises shall occur.
 - i. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the business must cease between the hours of 9:30 p.m. and 7:00 a.m.
 - j. The home occupation, including any business storage, shall not displace or impede use of parking spaces required by this chapter. The home occupation shall not displace, interfere with or impede access to public parking.
 - k. The home occupation shall not cause the congregation of business employees at the site or congestion in the availability of on-street parking.
 - l. The business must be of a type that would be permitted anywhere in the C-2 general retail and highway oriented commercial district without approval from the board of adjustment.
 - m. Any special permit for a home occupation shall be in effect only for so long as the premises are owned and occupied by the applicant.
 - n. Any special permit for a home occupation shall be subject to reconsideration by the board if at any time the zoning enforcement officer determines that the conduct of the occupation has become detrimental to the neighborhood.
- (11) Temporary off-street parking areas for more than five vehicles, which do not satisfy the standards of section 134-1377 in situations where such areas are planned to be developed for buildings within 18 months from the date of hearing, or where it is reasonable to allow time for new deposits of fill to settle before applying the standards of section 134-1377 to the area; provided that no such special permit shall be granted for a longer term than 18 months, and provided

- that every such special permit granted shall be conditioned on maintenance of both a dustless surface and a drainage system approved by the city engineer.
- (12) Communication towers and antennas over 180 feet tall in the M-1 and M-2 districts, provided:
- a. Notice of the public hearing before the board shall be provided to all owners of record of property within 300 feet of the subject property.
 - b. Any service building or equipment located at grade shall be screened from adjoining residential uses.
 - c. Any tower shall be adequately set back and screened from adjoining residential uses.
 - d. The adverse visual impact of a tower shall be minimized through careful design, siting, landscape screening and innovative camouflaging techniques.
 - e. Collocation and shared use of existing and new towers shall be preferred over the construction of additional towers.
 - f. The applicant shall present a signed lease agreement, a recorded declaration of covenants, or other satisfactory evidence showing that the owner/operator of a tower is obligated to promptly remove the tower at the end of the lease term or when the antenna thereon is no longer used, and that the site will be sodded unless otherwise approved by the community development director for compatibility with the surrounding area.
- (13) Grand opening or special event signage. Subject to having obtained a sign permit for the event, any signs, including banners, balloons, posters, pennants, ribbons, streamers, spinners and similar devices, for up to 30 consecutive days to announce a grand opening or a special event are permitted. Only two such special permits may be granted for any property under common ownership in any one-year period.
- (14) The land application of petroleum-contaminated soil shall comply with the Iowa Administrative Code, and, further, no contaminated soil may be applied within 500 feet of a well or any residence or within 500 feet from a stream, lake, pond, sinkhole, or tile line or storm drain surface intake located downgradient of the land application site.
- (15) Public, semipublic or public service buildings, hospitals, schools, business colleges and related structures, churches and temples, when permitted in a district, may be erected to a height not exceeding 125 feet, if the building is set back from each property line at least one foot for each foot of additional building height above the height limit otherwise provided in the district in which the building is located.
- (16) Freestanding stacks, ornamental towers and spires, and private electric and light poles of a height in excess of that otherwise allowed in the district in which they are located.
- (17) Electric substations, gas regulator facilities, water and sewer pump stations.

- (18) Sales activities and signage in conjunction with seasonal and special events such as official holidays, farmers' markets, festivals and carnivals, subject to the following:
- a. The event shall not cause or produce unreasonable traffic, noise, dust, odor, or litter, and shall not in any other way be detrimental to the neighborhood.
 - b. The event is intended to serve the convenience or need of the general public.
 - c. The granting of the special permit is for the applicant only, shall specify the date upon which such activities may occur, and shall not extend over a period of more than five years.
 - d. The special permit is subject to reconsideration by the board of adjustment at any time the zoning enforcement officer determines that the conduct of the event has become detrimental to the neighborhood.
- (19) The use of barb wire or similar fencing material for security purposes, upon a finding by the board that the need for extraordinary security precautions are necessary and reasonable under the circumstances, that the need for security is extraordinary when compared to the security needs of other permitted uses in the area generally, and that the necessary security cannot be feasibly provided by alternate means.

Sec. 134-1327. Application.

Application for a special permit under the terms of this division shall be accompanied by evidence concerning the feasibility of the proposed request and its effect on surrounding property and shall include a site plan defining the areas to be developed for structures; the areas to be developed for parking; the locations of sidewalks and driveways and the points of ingress and egress, including access streets where required; the location and heights of walls; the location and type of landscaping; and the location, size, and number of signs. The application shall further demonstrate compliance with any special standards applicable to the proposed use under section 134-1326, and with the general standards for approval of a special permit under section 134-1328.

Sec. 134-1328. Review.

The board of adjustment shall have the power and duty to approve a special permit for a proposed use if it finds that the applicant has demonstrated that the design, construction and manner of operation of the proposed use will substantially conform with any special standards applicable to the proposed use under section 134-1326 and the general standards set forth below:

- a) *General.* Any structure or use of land to be allowed by a special permit shall by its design, construction and operation adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property; shall not unduly

increase congestion in the public streets; shall not increase public danger of fire and safety; and shall not diminish or impair established property values in surrounding areas, and shall have no significant detrimental impact on the use and enjoyment of adjoining properties

- b) *Bulk standards.* Any deviation from the district bulk standards applicable to uses allowed by the district regulations must be reasonably necessary due to practical difficulties related to the land or type of use in question; and, such practical difficulties cannot be overcome by any feasible alternative means.
- c) *Residential setback.* Adequate setbacks shall be provided to protect adjacent residentially zoned property from non-residential and institutional uses.
- d) *Architectural character.* New buildings and alterations to existing buildings located in or adjacent to existing developed areas shall be compatible with the existing architectural character of such areas. Compatibility may be achieved through techniques such as the repetition of roof lines, the use of similar proportions in building mass and outdoor spaces, similar relationships to the street, similar window and door patterns, and/or the use of building materials that have color shades and textures similar to those existing in the immediate area of the proposed development. Brick and stone masonry shall be considered compatible with wood framing and other materials.
- e) *Building mass.* New buildings and alterations to existing buildings shall be either similar in size and height, or if larger, shall be articulated, setback or subdivided into massing that is proportional to the mass and scale of other structures on the same block and adjoining blocks. Articulation may be achieved through variation of roof lines, setbacks, patterns of door and window placement, and the use of characteristic entry features. To the maximum extent feasible, the height, setback and width of new buildings and alterations to existing buildings should be similar to those of existing buildings on the same block. Taller buildings or portions of buildings should be located interior to the site. Buildings at the ends of blocks should be of similar height to buildings on the adjoining blocks.
- f) *Parking.* No parking should be permitted in a required front yard of an "R" district unless shown to be compatible with the adjoining land use. Parking lots containing more than eight parking spaces should comply with the adopted landscape standards applicable to commercial development in the C-1 district, unless a higher standard is applicable under the site plan regulations.

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

T.M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, 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. 05-3041), passed by the City Council of said City at a meeting held December 19, 2005 signed by the Mayor on December 19, 2005 and published as provided by law in the Business Record on January 9, 2006 Authorized by Publication Order No. 4988.

Diane Rauh, City Clerk