

**City Council's First Draft**  
**May 25, 2011,**  
**SUBSTITUTE DRAFT ORDINANCE NO. 11-011**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON,** amending the zoning requirements regulating building heights, setbacks, parking, and establishing floor area ratios within Downtown Commercial Zone of the Marina District as established in the Des Moines Comprehensive Plan; amending DMMC 18.27.010, .020, .030, .040, .050, and .060; and repealing DMMC 18.27.070.

**WHEREAS,** approximately 53 acres of land area exists in the City's Marina District adjacent to Marine View Drive, 7<sup>th</sup> Avenue South, and along portions of 6<sup>th</sup> Avenue South and within the City's Marina that are zoned DC, Downtown Commercial, and

**WHEREAS,** the Marina District neighborhood serves as the City's downtown core providing for multi-family residential, commercial and mixed use development, and

**WHEREAS,** the Council Finance and Economic Development Committee has determined that land in the Marina District is highly underutilized and that growth and vitality in the neighborhood is linked to providing for, accommodating, and encouraging property owners to develop to the highest and best use, and

**WHEREAS,** personal service oriented commercial use and high residential density within mixed use development are both considered highest and best uses that are desired by the City, and

**WHEREAS,** the Finance and Economic Development Committee met on February 8, 2011 and February 22, 2011 to recommend and review proposed changes to the Downtown Commercial zone needed to promote Economic Development in the Marina District, and

**WHEREAS, two public open houses were held on April 30, 2011 and May 4, 2011 to provide an opportunity for the public to comment on the changes contained in this ordinance, and**

**WHEREAS,** notice of the public hearing was given to the public in accordance with law and a public hearing was held on the May 12, 2011, and all persons wishing to be heard were heard, and

WHEREAS, the notice of the April 30, 2011 and May 4, 2011 public open houses was mailed to every resident, property owner, and business owner with the City of Des Moines, and

WHEREAS, pursuant to DMMC 18.56.080, amendment of the zoning code (Title 18 DMMC) is a legislative (Type VI) land use decision, and

WHEREAS, the textual code amendments proposed by this ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (SEPA), and

WHEREAS, the SEPA review determined that there is adequate water, sewer, utility and transportation capacity to serve the potential growth associated with the proposed zoning amendments as determined by the relevant capital facility plans, and

WHEREAS, a determination of nonsignificance (DNS) was issued on April 12, 2011 by the responsible official, and the applicable SEPA comment period has concluded, and

WHEREAS, the textual code amendments proposed in this ordinance were provided to the Department of Commerce as required by RCW 36.70A.106, and

WHEREAS, the City Council finds that the amendments contained in this ordinance are appropriate and necessary; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

**Sec. 1.** DMMC 18.27.010 and section 1 of Ordinance No. 1104 as amended by section 3 of Ordinance No. 1237 are each amended to read as follows:

**Purpose of zone.**

(1) The primary purpose and objective of the Ddowntown Commercial (D-C) zone is to enhance, promote, and ~~maintain the business areas of the downtown neighborhood~~ encourage development within the Marina District.

(2) It is the further purpose of this zone to: (a) ensure land use compatibility among businesses and residences in terms of permitted uses, building height, bulk, scale; (b) provide a downtown that reflects its waterfront location; and (c) ensure that development occurs consistent with the goals, policies, and implementation strategies of the City of Des Moines Comprehensive Plan.

~~(3) It is the further purpose of this zone to ensure consistent administration of the provisions of this chapter and to recognize the hearing examiner as the appropriate party for appeal of administrative decisions.~~<sup>1</sup>

**Sec. 2.** DMMC 18.27.020 and section 2 of Ordinance No. 1104 as amended by section 3 of Ordinance No. 1237 as amended by section 1 of Ordinance 1493 are each amended to read as follows:

**Permitted uses.** Only those uses listed below, and uses similar in nature as determined by the ~~planning, building, public works director~~City Manager or designee, may be permitted in the D-C zone. Each use is more fully described in the "Standard Industrial Classification Manual." Listed uses may be otherwise conditioned in this code. The numbers in parentheses following each of the following listed uses refer to the Standard Industrial Classification (SIC) code numbers:

(1) Horticultural specialties limited to community gardens and pea patches by membership (018);

---

<sup>1</sup> [This information was placed into the Chapter prior to the development of the Local Project Review Act \(Chapter 36.70B RCW\). These provisions are now provided in Chapter 18.56 DMMC, which contains all of the City's Land Use Review Procedures.](#)

(2) Veterinary services for animal specialties (0742) and dog grooming (0752);

(3) Landscape and horticultural services (078);

(4) Fish hatcheries and preserves (092), limited to those properties that abut or are within the intertidal area of Puget Sound;

(5) Art glassware made in glassmaking plants (3229);

(6) Photocopying and Duplicating Services (7334);

(7) Art and ornamental ware, pottery (3269);

(8) United States Postal Service facilities (4311);

(9) Marinas (4493);

(10) Arrangement of passenger transportation (472);

(11) Retail trade, with ancillary wholesale trade, limited to the following:

(a) Building materials, hardware, and garden supply, except mobile home dealers (52);

(b) General merchandise stores (53);

(c) Food stores (54);

(d) Gasoline service stations, and other alternative motor vehicle fuels (55<sup>41</sup>);

(e) Apparel and accessory stores (56);

(f) Home furniture, furnishings, and equipment stores (57);

(g) Eating and drinking places (58);  
and

(h) Miscellaneous retail (59),  
except fuel dealers (598);

(12) Finance, insurance, and real estate institutions and services (60-67);

(13) Services, limited to the following:

(a) Hotels and motels (701);

(b) Personal and business services,  
with ancillary wholesale trade (72-73), except the following:

(i) Industrial laundrerers  
(7218);

(ii) Billboard advertising  
(7312);

(iii) Heavy construction  
equipment rental and leasing (7353);

(iv) Industrial truck rental  
and leasing (7359); and

(v) Oil extraction equipment  
rental and leasing (7359);

(c) Automobile parking (7521)  
limited to properties that are municipally owned  
or operated or controlled by a City-sanctioned  
business neighborhood association and provided  
that facilities for parking are constructed and  
maintained to meet minimum required parking  
improvements specified in chapter 18.44 DMMC

within three (3) years of the commencement of such use;

(d) General automotive repair shops (7538);

(e) Car washes (7542);

(f) Miscellaneous repair services (76), except the following:

(i) Tank and boiler cleaning service (7699); and

(ii) Tank truck cleaning service (7699);

(g) Motion picture services (78);

(h) Amusement and recreation services (79), except the following:

(i) Adult entertainment facilities and adult motion picture theaters (No SIC); and

(ii) Racing, including track operation (7948);

(i) Health services (80);

(j) Legal services (81);

(k) Educational services (82);

(l) Social services (83);

(m) Museums, art galleries, and botanical and zoological gardens (84);

(n) Membership organizations (86);

(o) Engineering, accounting, research, management, and related services (87); and

(p) Services, not elsewhere classified (89);

(14) Public administration facilities (91-97), except correctional institutions (9223);

(15) Mixed use (~~No~~ SIC code); and

(16) Public parks (No SIC code); ~~;~~

**Sec. 3.** DMMC 18.27.030 and section 3 of Ordinance No. 1104 as amended by section 3 of Ordinance No. 1237 as amended by Section 2 of Ordinance No. 1493 are each amended to read as follows:

**Environmental performance standards, use restrictions, and general limitations.**

(1) Every use permitted within the D-C zone pursuant to this chapter shall conform to the following general limitations and standards:

(a) As provided by chapter 9.64 DMMC, no use, activity, or equipment shall be permitted that creates a nuisance or is offensive, objectionable, or hazardous by reason of creation of odors, noise, sound, vibrations, dust, dirt, smoke, or other pollutants, noxious, toxic, or corrosive fumes or gases, radiation, explosion or fire hazard, or by reason of the generation, disposal, or storage of hazardous or dangerous wastes or materials in a manner(s) inconsistent with Title 70 RCW as presently constituted or as may be subsequently amended;

(b) Accessory uses are permitted that are customarily appurtenant or incidental to the principally permitted uses;

~~(c) Landscaping and fencing are required in accordance with chapter 18.41 DMMC;~~<sup>2</sup>

(~~c~~d) All uses shall be primarily contained within an enclosed structure except the following:

(i) Outdoor seating and dining;

(ii) Signs;

(iii) Off-street parking, drive-through facilities, and loading areas;

(iv) Motor vehicle fuel pumps;

(v) Display of merchandise sold on site; and

(vi) Play/recreation areas.

(~~d~~e) In reviewing a proposed permitted use, the ~~planning, building, public works director~~City Manager or designee may waive or include minimal conditions as may be reasonably needed to ensure that the use is consistent with the purpose of the D-C zone, and to minimize the likelihood of adverse impacts.

(2) Home Occupations shall be permitted only as an accessory use, provided that all of the following conditions and limitations are satisfied:

(a) The principally permitted use to which the home occupation is accessory shall be a legally permitted, constructed, and conforming residential component of a mixed use development;

---

<sup>2</sup> [This requirement is also provided in this Chapter in another location – DMMC 18.27.050 \(General Site Design Requirements\). This section is included in the Ordinance under Section 5. Requirements related to site design should be in the Site Design Section instead of the Environmental Performance Section.](#)

(b) All conditions set forth in DMMC 18.08.020(18) are satisfied.

(3) Boat storage and repair shall be permitted only as an accessory use on property principally permitted for Marina use and shall conform to the following additional limitations and standards:

(a) The size and location of all boat storage facilities shall be consistent with the Council adopted Marina Master Plan;

(b) All out-of-water boat repair shall be within a fully secured and fenced area not accessible by the general public;

(c) All boat repair work shall have containment areas and employ disposal methods for pollutants and toxic substances consistent with Puget Sound Clean Air Agency and NPDES standards;

(d) Only those boats and similar vessels that will be immediately and actively under repair shall be moved to or placed within a designated boat repair facility.

(4) Adult entertainment facilities and adult motion picture theaters are not permitted in the D-C zone.

(5) Nonconforming uses located in the D-C zone shall be allowed to continue to exist, but only to the extent, size, or scale that these uses were legally authorized or licensed to operate by the City. A property containing a single business entity that is a nonconforming use shall not be allowed to add any other use components or otherwise increase the intensity or facet of the use unless all nonconforming use elements of the property are first completely removed from the site. A property containing multiple business

entities and that has one or more nonconforming uses upon it shall not be allowed to add any other use components or otherwise increase the intensity or facet of that portion of the property or building containing uses that are nonconforming unless the addition of a new use results in the complete removal of that portion of the property or building containing a nonconforming use.

(6) Automobile repair, carwashes, automobile service stations, uses with drive-through facilities, and similar uses shall conform to the following limitations and standards:

(a) Automobile repair and the installation of automobile parts and accessories shall be wholly performed within an enclosed structure approved by the building official for such occupancy;

(b) Each automotive and service repair facility shall be limited to a maximum of one service bay for each 7,500 square feet of land area per business site;

(c) Service bays shall be fully utilized to store and park vehicles contracted for repair or service;

(d) The number of vehicles stored or parked outside for repair or service shall not be greater than the minimum number of required parking stalls serving the auto repair facility pursuant to chapter 18.44 DMMC;

(e) No outside parking or storage of employee vehicles, customer vehicles, or vehicles contracted for service shall occur in any area that is not designated and approved by the City as an on-site parking stall;

(f) Motor vehicle fuel pump islands shall be set back a minimum of 15 feet from property lines;

(g) A six-foot high, 100 percent sight-obscuring fence shall be provided along property lines that abut residentially zoned properties, unless waived by the residential property owner prior to building permit issuance.

(7) Welding repair (7692) is only permitted in an enclosed structure.

(8) Social service facilities shall conform to the following limitations and standards:

(a) Outdoor play/recreation areas for children shall be set back a minimum of five feet from property lines; and

(b) Unless specifically authorized by the ~~planning, building, public works director~~ City Manager or designee, passenger loading and unloading areas shall be provided on site.

(9) Mixed use development shall conform to the following limitations and standards:

(a) Mixed use structures shall contain area for retail trade or personal and business services, at street level as follows:

(i) Pedestrian access from the public sidewalk to the retail trade or personal and business services shall be provided, and

(ii) A minimum of 60 percent of the street level floor area shall be occupied by retail trade or personal and business services;

(iii) A minimum of 75 percent of the street level building frontage adjacent to public right(s)-of-way shall contain floor area for retail trade or personal and business services uses;

(iv) Building space allocated for retail trade or personal and business service uses at the street level shall have a minimum gross interior depth dimension of 55 feet measured perpendicular to the property line abutting the public street(s) serving the site.

~~(b) — (v) The planning, building, and public works director~~ City Manager or designee is authorized to consider and approve up to a 20% reduction of the bulk requirements specified in DMMC 18.27.030 (9)(a)(ii),(iii), and (iv) when a development proposal incorporates on-site parking substantially at street floor level for retail trade or personal and business service uses and the ~~director~~ City Manager or designee determines that the proposed reduction(s) does not compromise, interrupt, or interfere with the desired functionality of the building or the continuity of City pedestrian-oriented design goals in the general area and pedestrian access to the site from the public sidewalk or right-of-way.

(c) Mixed use developments shall comply with all the requirements of Chapter 18.45 DMMC, except for private recreational requirements established by DMMC 18.45.020(2).

~~(b) — On-site multifamily recreation area is provided for developments with four or more dwelling units as provided by chapter 18.45 DMMC, except the minimum area of common recreation space per dwelling unit shall be 25 square feet; and~~

~~(ed)~~ A detached structure that contains residential uses and does not meet the requirements for mixed use structures is prohibited.

**Sec. 4.** DMMC 18.27.040 and section 4 of Ordinance No. 1104 as amended by section 1 of Ordinance No. 1120 are each amended to read as follows:

**Dimensional standards.**

           (1) Maximum Building Height. ~~Maximum building height is 35 feet as measured from mean average sidewalk grade or, if there is no sidewalk, from mean average street frontage grade, subject to the following exceptions:~~

                           (a) Area 1 on Figure 1 the maximum building height is 35 feet as measured from mean sidewalk grade of the north-south roadway adjacent to the property.

                           (ab) ~~In that portion of the D-C zone Area 2 on Figure 1 the maximum building height is 45 as measured from mean sidewalk grade of the north-south roadway adjacent to the property line. abutting the east margin of Marine View Drive, maximum building height must conform to either of the following measurement standards, whichever is higher:~~

~~(i) Thirty-five feet from mean average sidewalk grade as measured from Marine View Drive; or~~

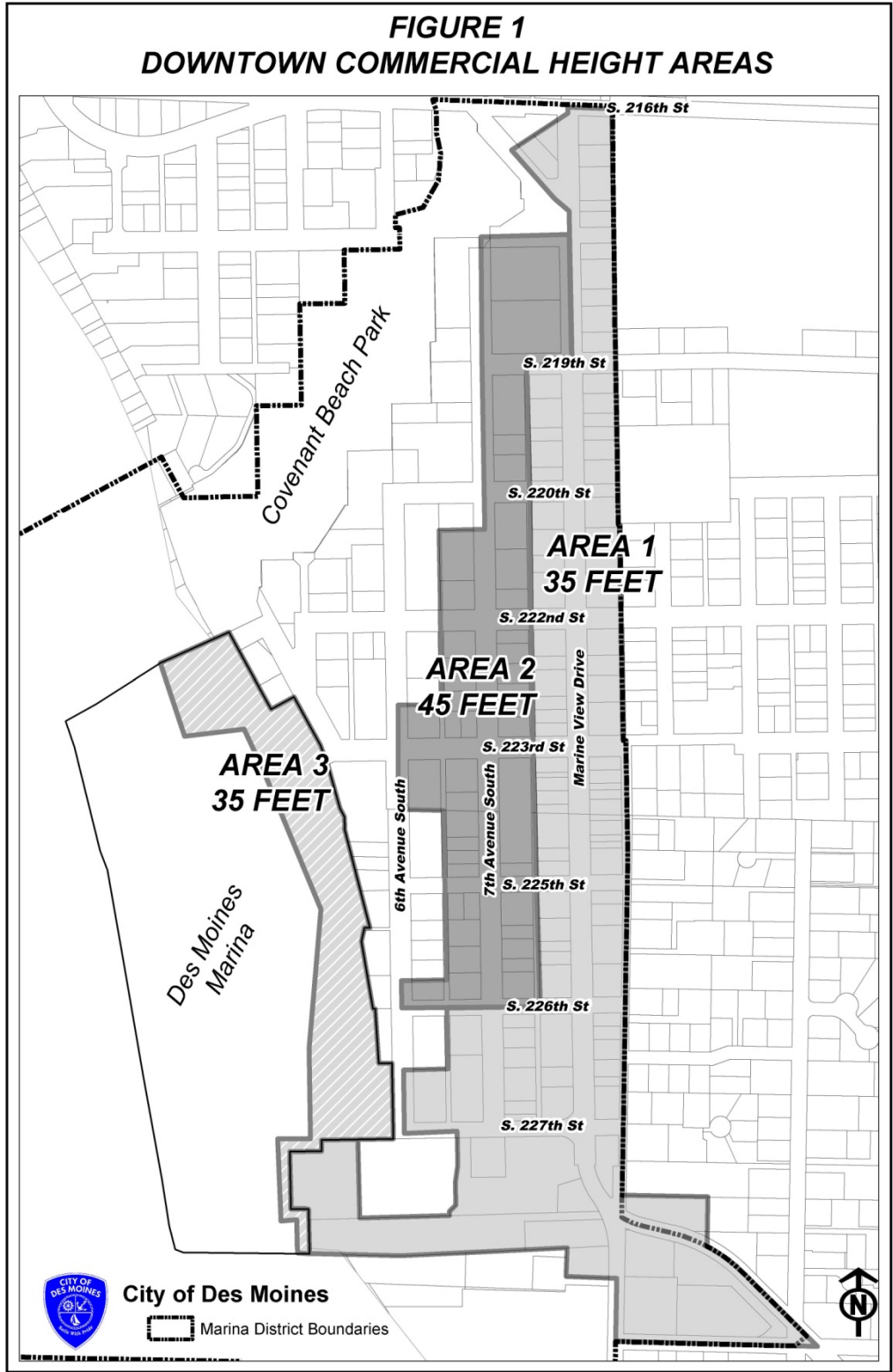
~~(ii) Twenty-five feet from mean average street frontage grade of 8th Avenue South (including the alley extension of 8th Avenue South north of South 223rd Street).~~

                           (bc) Area 3 (the Des Moines Marina) on Figure 1 the maximum building height is 35 feet as measured from the Marina Floor. Maximum building height for properties contiguous to the Des Moines marina is 35 feet as measured from mean average sidewalk grade or mean average street frontage

~~grade at the marina floor, that is also know as  
vacated Dock Street.~~

~~(c) Maximum building height for  
properties abutting two north/south streets,  
except properties regulated by subsection (a) of  
this section, is measured from the street frontage  
providing primary access to the building as  
determined by the director of community  
development.~~

~~(d) Maximum building height for  
properties abutting one north/south street and one  
east/west street is measured from the north/south  
street frontage.~~



(2) Building Height Bonus. In the D-C zone, the City Manager or designee may authorize additional building heights as provided below:

(a) Area 1 on Figure 2 the maximum building height is 45 feet as measured from the mean sidewalk grade of the north-south roadway adjacent to the property line.

(b) Area 2 on Figure 2 the maximum building height is 65 feet as measured from the mean sidewalk grade of the north-south roadway adjacent to the property line.

(c) Area 3 on Figure 2 the maximum building height is 75 feet as measured from the sidewalk grade of 7<sup>th</sup> Avenue South.

(d) The total maximum amount of additional square footage for all buildings within the individual bonus areas that can be authorized by the City Manager or designee under this section is provided below:<sup>3</sup>

(i) Area 1 Figure 2: 60,000 square feet.

(ii) Area 2 Figure 2: 70,000 square feet.

<sup>3</sup> Based on the minimum lot area for the height bonus of 20,000 square feet and the Floor Area Ratio (FAR)(defined as the ratio of total building square footage to lot area) established for each area in Section 6 of this Ord. and the square footages established by this section for each area the following number of buildings could be built:

- Area 1 of Figure 2 with a FAR of 3.2 would allow a maximum of 4 buildings to be built to 45 feet along MVD
- Area 2 of Figure 2, with a FAR of 3.8 would 4-5 buildings to be built to 65 feet in Area 2 of Figure 2 along 7<sup>th</sup> Avenue.
- There is no maximum established for Area 3 of Figure 2 as this only applies to the QFC Site and as such would result in one or two taller buildings. Also the buildings located in Area 3 (the QFC Site), the building height is measured from 7<sup>th</sup> Avenue so while the building would be 75 feet from 7<sup>th</sup> Avenue given the grade changes, the building would be 65 feet tall if measured from Marine View Drive.

(iii) Area 3 Figure 2: No maximum.

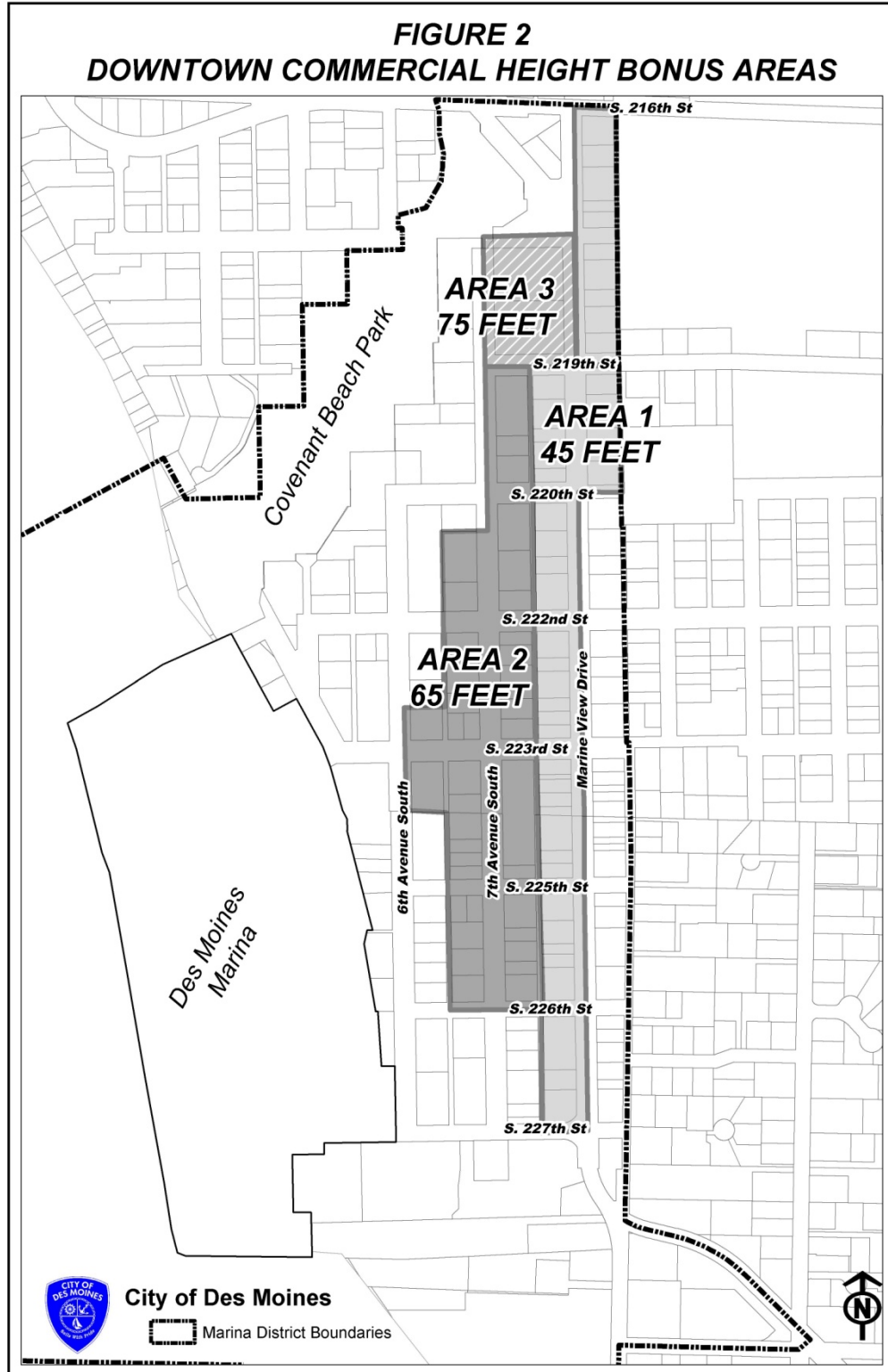
(b) The building is a mixed-use building.

(c) The total floor area of the building does not exceed the total allowable floor area ratio as determined by 18.27.060(3).

(d) The minimum building site area is 20,000 square feet.

(e) Pedestrian oriented spaces as defined in the Marina District Guidelines are provided.

(f) The property owner shall enter into a no protest agreement regarding the formation of a Parking Business Improvement Area as regulated under Chapter 35.87A RCW.

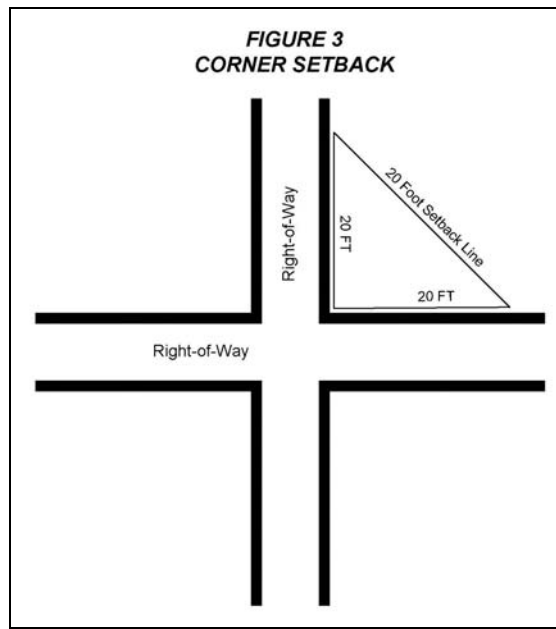


(23) Setbacks. All structures shall maintain setbacks from property lines as set forth below:

(a) Where any lot line lies adjacent to a public right-of-way or private street and residentially zoned property lies adjacent to such public right-of-way or private street, or when the lot line abuts a residentially zoned property, a minimum building or structure setback of 10 feet shall be maintained; and

(b) Corner Lot Building Setback:

(i) All buildings located on corner lots shall observe a 20 foot setback from the corner as measured from the corner of the right-of-way as illustrated in Figure 3 below:



(ii) The City Manager or designee may allow encroachments into this corner setback area if the total area within the setback does not fall below 200 square feet and preserves a building setback at the corner.

(~~b~~c) Underground structures are permitted in all required setback areas.

**Sec. 5.** DMMC 18.27.050 and section 5 of Ordinance No. 1104 as amended by section 3 of Ordinance No. 1297 as amended by section 1 of Ordinance No. 1427 as amended by section 2 of Ordinance No. 1439 are each amended to read as follows:

**General site design requirements.**

Development within the D-C zone shall conform to the following site design requirements:

(1) Walkways. Paved pedestrian walkways shall be provided on-site on newly developed properties or materially remodeled, enlarged, or repaired to the extent of 50 percent of the market value as specified below:

(a) Pedestrian walkways shall be provided at or around building(s) of sufficient extent to provide safe pedestrian passage. A minimum six-foot walkway shall be provided adjacent to the principal building entrance(s);

(b) A minimum six-foot pedestrian walkway shall be provided that connects walkways at the building to the street sidewalks. Where no street sidewalk exists, the connecting walkway shall extend to the public right-of-way;

(c) Walkways and sidewalks shall be differentiated from vehicular circulation or vehicular parking areas as approved by the ~~community development director~~City Manager or designee;

(d) Walkways shall conform with all applicable provisions of chapter 51-10 WAC - Barrier-free facilities, as presently constituted or as may be subsequently amended; and

(e) Lighting shall be provided where stairs, curbs, ramps, or abrupt changes in walkway direction occur.

(2) Placement of Buildings.

(a) Buildings or structures located in Area 1 of Figure 4 are not required to abut the adjacent sidewalk. On-site parking facilities are allowed between the building and the adjacent sidewalk.

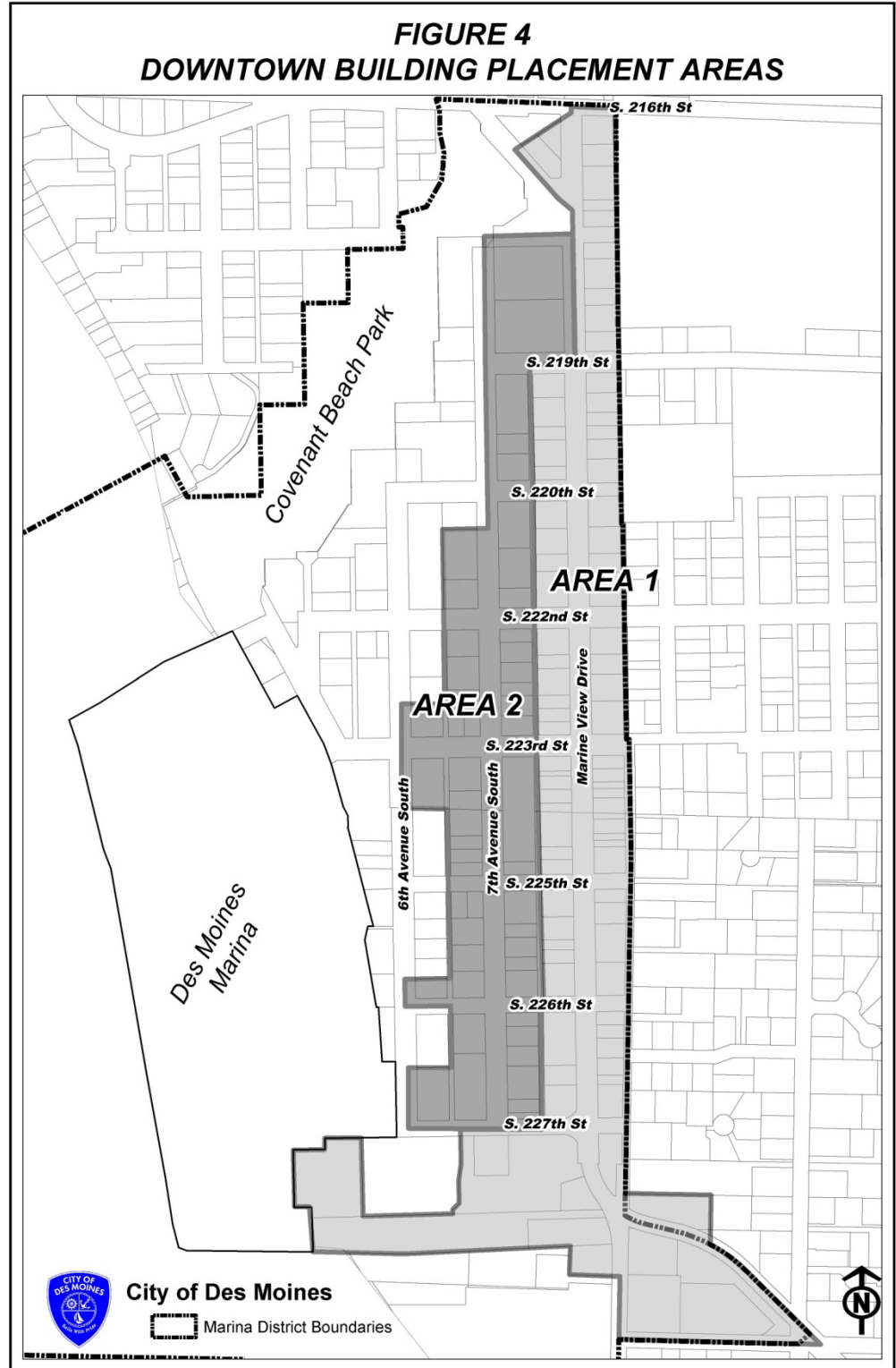
(b) Buildings or structures located in Area 2 of Figure 4 shall be located in close proximity to the adjacent sidewalk. The area between the building and the adjacent sidewalk can be used for pedestrian oriented spaces as defined in the Marina District Design Guidelines, outside dining, sitting areas, or landscaped open space. Parking areas are prohibited between the building and the adjacent sidewalk.<sup>4</sup>

---

<sup>4</sup> *This provision will only apply to new buildings along 7<sup>th</sup> Avenue and 6<sup>th</sup> Avenue. One of the primary differences between MVD and 7<sup>th</sup> and 6<sup>th</sup> Avenue is there is a significantly lower volume of travel, and there is parallel parking on both sides of 7<sup>th</sup> for the entire length of the roadway and there is sufficient existing right-of-way to install angle parking if it is required in the future. Further 7<sup>th</sup> Avenue has been designated as a priority pedestrian corridor and bike way in the 2009 Comprehensive Transportation Plan. Designing buildings and related site improvements for pedestrians is fundamental for creating an environment that encourages walking, biking and transit use which is key to establishing a priority pedestrian corridor. This approach also helps to promote active lifestyles through the City's Land Use Planning which is one goal of the HEAL Grant and the King County Public Health Department. The continuous rhythm of detailed building storefronts built in close proximity to the sidewalk without the interruptions of parking lots, contributes to an exciting pedestrian environment.*

- When new developments put their parking in front the pedestrian environment is significantly diminished. It also makes it less appealing for other, adjacent projects to address the street, creating a vicious cycle away from an active streetscape, while in contrast, new buildings with their parking in the rear start a cycle in the opposite, positive direction.*
- Pedestrians are also given low priority and may be left to navigate between parked cars and across wide driveways, which presents safety concerns*

*Allowing the buildings to be set back and allowing parking lots in front of the buildings along MVD and creating a "Main Street" along 7<sup>th</sup> Avenue similar to that found in Poulsbo, Port Townsend, LaConner, and Leavenworth with buildings in close proximity to the sidewalk will facilitate a higher quality pedestrian environment in this portion of the Marina District while respecting the auto-oriented nature of Marine View Drive. This approach would also allow for quality pedestrian connections between 7<sup>th</sup>, the Marina, and Beach Park.*



(23) Parking and loading areas. All ~~uses~~ properties shall conform to the off-street parking provisions and loading area provisions set forth by chapter 18.44 DMMC.

(34) Vehicular access and other right-of-way improvements shall conform to the provisions set forth by Title 10 and Title 12 DMMC. ~~There shall be no customer/employee vehicular access to 8th Avenue South between South 223rd Street and South 227th Street from commercial properties. Vehicular access and other right-of-way improvements shall otherwise conform to the provisions of Title 12 DMMC.~~

(5) Properties that have vehicular access from 8<sup>th</sup> Avenue between South 223<sup>rd</sup> Street and Kent-Des Moines Road shall provide on-site delivery unloading areas.

(6) Angled parking shall be allowed along Marine View Drive provided that the following standards are met:<sup>5</sup>

(a) The sidewalk shall be relocated within dedicated right-of-way so that the curb face of the relocated sidewalk is located 36 feet as measured from the edge of traveled way of the nearest lane of traffic on Marine View Drive.

(b) The relocated sidewalk shall be entirely in right-of-way or newly dedicated right-of-way.

(c) The length of relocated sidewalk shall be a minimum of 100 feet, not including any sidewalk transition areas.

<sup>5</sup> The standards established are to replicate the condition that currently exists in front of the Theater Block. Please note that the average lot in the Marina District along MVD is 120 feet deep, so this approach would require that the property owner dedicate approximately 16% of their property in order to provide the angled parking in a safe manner acceptable under common engineering practices.

(d) Sidewalk transition lengths and dimensions shall be provided by the City Engineer.

(e) Only head-in angled parking shall be allowed within the right-of-way on Marine View Drive, except that area of existing parallel parking on Marine View Drive shall be allowed to remain in place until the adjoining property redevelops, at which time the property owner may choose to construct angle parking in accordance with the provisions of this section, or the property owner may choose to eliminate the section of parallel parking, or the City's Traffic Engineer determines that a safety concern exists that necessitates removal of such parallel parking.

(f) Angled Parking installed by a property owner under this section would be counted toward the total number of parking stalls required by Chapter 18.44 DMMC.

(46) Uses within the right-of-way. Sidewalk cafes, vendors, and similar temporary commercial uses within the public right-of-way shall conform to the provisions of Title 12 DMMC and the following provisions:

(a) A minimum of six feet of unobstructed sidewalk shall be maintained;

(b) The applicant shall demonstrate proof of public liability insurance and consent to a public place indemnity agreement;

(c) The duration of right-of-way use permits for commercial purposes shall be limited to one year; applicants may reapply for right-of-way use permits;

~~(d) Sale or consumption of alcoholic beverages is prohibited;~~

(e) Applications for right-of-way use permits for commercial purposes shall include the following information:

(i) Proposed items to be placed within the right-of-way, such as seating, tables, fencing, vending carts, etc.;

(ii) Proposed activities to occur within the right-of-way, such as dining, amplification of music, preparation and sale of food or beverage items, etc.;

(iii) Proposed periods of operation, including months of the year, days of the week, hours, etc., and

(iv) Proposed source(s) of utilities such as electrical power;

(f) Applicants must immediately clear the public right-of-way when ordered to do so by city authorities for reasons of public health or safety; and

(g) In reviewing a proposed use within the public right-of-way, the ~~community development director~~City Manager or designee may include conditions as may be reasonably needed to ensure that the use is consistent with the purpose of the D-C zone, and to minimize the likelihood of adverse impacts. The City Manager or designee~~community development director~~ shall deny the request if it is determined that adverse impacts cannot be mitigated satisfactorily.

(5) Landscaping. All uses shall conform to the landscaping and screening provisions set forth by chapter 18.41 DMMC.

(6) Outdoor uses. Outdoor activities such as sales, display, storage, dining, etc., shall not

obstruct vehicular or pedestrian visibility or movement.

**Sec. 6.** DMMC 18.27.060 and section 6 of Ordinance No. 1104 as amended by section 3 of Ordinance No. 1237 are each amended to read as follows:

**General building design requirements.** Development within the D-C zone shall conform to the following building design requirements:

(1) Structural encroachments into the right-of-way, such as cornices, signs, eaves, sills, awnings, bay windows, balconies, facade treatment, marquees, etc. shall conform to the provisions set forth by Title 12 DMMC, and Title 14 DMMC~~the Uniform Building Code~~, and the following provisions:

(a) Structural encroachments into the right-of-way shall be capable of being removed without impact upon the structural integrity of the primary building;

(b) Structural encroachments into the right-of-way shall not result in additional building floor area than would otherwise be allowed;

(c) Except for awnings, signs, and marquees, the maximum horizontal encroachment into the right-of-way shall be two feet;

(d) The maximum horizontal encroachment in the right-of-way by signs shall be four feet;

(e) The maximum horizontal encroachment in the right-of-way by awnings and marquees shall be six feet;

(f) The minimum horizontal distance between the structural encroachment and the curblines shall be two feet;

(g) Except for awnings over the public sidewalk which may be continuous, the maximum length of each balcony, bay window, or similar feature that encroaches the right-of-way shall be 12 feet;

(h) The applicant shall demonstrate proof of public liability insurance and consent to a public place indemnity agreement;

(i) Owners of structural encroachments into the right-of-way must clear the public right-of-way when ordered to do so by city authorities for reasons of public health or safety; and

(j) In reviewing a proposed structural encroachment into the public right-of-way, the ~~community development director~~ City Manager or designee may include conditions as may be reasonably needed to ensure that the structure is consistent with the purpose of the D-C zone, and to minimize the likelihood of adverse impacts. The ~~community development director~~ City Manager or designee shall deny the request if it is determined that adverse impacts cannot be mitigated satisfactorily.

(2) Pedestrian entrances ~~to nonresidential uses~~ at street level shall conform to all applicable provisions of chapter 51-10 WAC - Barrier-free facilities, as presently constituted or as may be subsequently amended.

~~(3) The width of all floors above the second level floor shall not exceed 80 percent of the width of the street level floor.~~ Maximum Gross Floor Area:<sup>6</sup>

(a) Area 1 Figure 1: The maximum gross floor area allowed on a site is determined by multiplying the lot area of the site by 2.5.

(b) Area 2 Figure 1: The maximum gross floor area allowed on a site is determined by multiplying the lot area of the site by 3.2.

(c) Area 3 Figure 1: The maximum gross floor area allowed on a site is determined by multiplying the lot area of the site by 2.5.

(d) Using the Public Benefit Incentive System in 18.24.060(4) below, the maximum gross floor area can be increased as follows:

(i) Area 1 Figure 2: The maximum gross floor area allowed on a site is determined by multiplying the lot area of the site by 3.2

(ii) Area 2 Figure 2: The maximum gross floor area allowed on a site is determined by multiplying the lot area of the site by 3.8.

(iii) Area 3 Figure 2: The maximum gross floor area allowed on a site is determined by multiplying the lot area of the site by 4.

(d) For the purposes of this section, gross floor area does not include any underground areas designed and used for parking.

<sup>6</sup> By establishing a Floor Area Ratio or FAR, the total building square footage is regulated as a ratio to the lot area. For example a one story building build property line to property would have an FAR of 1; the total building square footage is equal to the lot area. As the FAR is increased the building square footage also increases. The FARs in this section are based on modeling exercise and were selected to ensure that new buildings did not create a solid building wall, providing open space, building modulation, and variety of building forms.

(e) For the purpose of this section, when more than one building is located on a single property the sum of all of gross floor areas of all the buildings shall not exceed the total gross floor area allowed for the property.

(4) Public Benefit Incentive System: The City Manager or designee may approve additional building square footage based on the ratios in Table 1 below subject to the following:

(a) The gross floor area and/or building height limits cannot exceed the limits allowed in 18.27.060(b) and 18.27.040(2), as provided in Table 1 below and the requirements of this section.

(b) After a project uses the maximum area of public benefit feature eligible for bonus, additional bonus floor area for that public benefit will not be awarded.

(d) The City Manager or designee may approve a public benefit feature not listed in Table 1 below if a public benefit is located within the Marina District, a public benefit will be derived from the proposed feature that is roughly equivalent to the benefit derived from a feature in Table 1.

<b>TABLE 1</b>		
<b>Public Benefit Incentive System Ratios</b>		
<b><u>PUBLIC BENEFIT FEATURE</u></b>	<b><u>BONUS FLOOR AREA PER UNIT OF PUBLIC BENEFIT FEATURE</u></b>	<b><u>MAXIMUM BONUS ADDITIONAL FLOOR AREA ALLOWED PER PUBLIC BENEFIT FEATURE</u></b>
<b><u>1. Streetscape</u></b>		
<u>Each \$1,000 spent on additional roadway improvements</u>	<u>100 square feet</u>	<u>No limit</u>
<u>Each \$1,000 contributed towards the Marina Steps or Beach Park.</u>	<u>100 square feet</u>	<u>No limit</u>
<b><u>2. Design Elements</u></b>		
<u>1 sq.ft. of underground parking</u>	<u>5 square feet</u>	<u>No limit</u>
<u>1 sq.ft. of below-ground public parking structure<sup>1</sup></u>	<u>2.5 square foot</u>	<u>No limit</u>
<u>1 sq.ft. of shared parking (for other sites)</u>	<u>0.5 square feet</u>	<u>No limit</u>
<u>1 sq.ft. of Rooftop Garden</u>	<u>2 square feet</u>	<u>No limit</u>
<u>1 sq. ft. of rooftop beautification</u>	<u>2 square feet</u>	<u>No limit</u>
<b><u>3. Civic Contributions</u></b>		
<u>1 sq.ft. of public parking area</u>	<u>0.5 square feet</u>	<u>15,000 square feet</u>
<u>1 sq.ft. of public meeting/conference facilities</u>	<u>1 square foot</u>	<u>No limit</u>
<u>Each \$1,000 spent on public art</u>	<u>100 square feet</u>	<u>No limit</u>
<b><u>4. Uses</u></b>		
<u>1 sq.ft. restaurant (not fast-food or take-out)</u>	<u>1 square foot</u>	<u>No limit</u>
<u>1 sq.ft. rooftop or top floor restaurant (not fast-food or take-out)</u>	<u>4 square feet</u>	<u>No limit</u>
<u>1 sq.ft. of day-care facilities</u>	<u>6 square feet</u>	<u>2,000 square feet</u>
<u>1 sq.ft. of public restroom</u>	<u>4 square feet</u>	<u>1,000 square feet</u>
<u>1 sq.ft. of public open space</u>	<u>4 square feet</u>	<u>No limit</u>
<u>1 sq.ft. of retail use on ground floor</u>	<u>2 square feet</u>	<u>No limit</u>
<u>1 sq.ft. of theater or performing arts venue</u>	<u>5 square feet</u>	<u>No limit</u>

1. City Manager (or designee) determination.

2. Areas devoted to service cores and community facilities may be used to obtain bonus floor area. No area devoted to parking or circulation may be used for this purpose.

**Sec. 7. Repealer.** DMMC 18.27.070 and Section 10 of Ordinance No. 1104 are each repealed.

**Sec. 8. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

**Sec. 9. Effective date.** This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

**PASSED BY** the City Council of the City of Des Moines this \_\_\_\_\_ day of \_\_\_\_\_, 2011 and signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Published: \_\_\_\_\_

Effective Date: \_\_\_\_\_