

**CITY OF WEST DES MOINES
PLAN AND ZONING COMMISSION COMMUNICATION**

Meeting Date: March 23, 2020

Item: Amendment to City Code – Amend Title 9 (Zoning), Chapter 3 (General Zoning Provisions) to exempt from general zoning regulations City improvements which promote the public health, safety and welfare – City Initiated (AO-004657-2020)

Requested Action: Recommend Approval of Amendment to City Code

Case Advisor: Richard Scieszinski, City Attorney

Applicant's Request: Title 9 of the West Des Moines Code of Ordinances sets forth the zoning rules and regulations of the City. These rules provide for the orderly and efficient development of the City while protecting the health, safety and welfare of the community. Although the City abides by the zoning code, there are particular projects it undertakes that are unique to a municipality and which are necessary and/or appropriate for the convenience or welfare of its citizens. In such circumstances compliance with the zoning code is not always possible. Examples include the construction of City identification signs in public rights-of-way that do not meet setback requirements, the placement of a satellite library kiosk on or near a public walkway, or the placement of antennas to provide public wi-fi that exceed height regulations.

City staff requests an amendment to the following in Title 9 (Zoning) to add language that will exempt the City from general zoning regulations for improvements it undertakes if the City Council determines, on balance, that the benefit of the improvement in the promotion of the health, safety and welfare of the community is greater than the burden created by exempting the improvement from the zoning code. In making the determination, the ordinance requires the City Council to consider the purpose of the improvement, whether there is any feasible alternative to the improvement, and the potential detriment to affected landowners from the improvement. Other factors the Council finds relevant may also be considered. It is anticipated that this Ordinance will be used sparingly but will be necessary as more municipal projects are undertaken. (See Attachment A, Exhibit A – Proposed Ordinance Amendment)

- Chapter 3, *General Zoning Provisions*, Section 3, *Scope: Modifications and Exceptions*, Subsection D, *Exceptions and Modifications*,

City Council Subcommittee: As part of a discussion on the City Entrance Signs at the October 15, 2018 Development & Planning City Council Subcommittee meeting, staff indicated that this ordinance amendment would be necessary to exempt the City from application of zoning to allow such a project. No disagreement to amending code was expressed.

Staff Review and Comment: There are no outstanding issues.

Noticing Information: On March 20, 2020, notice for the March 23, 2020, Plan and Zoning Commission and April 6, 2020, City Council Public Hearings on this project was published in the Des Moines Register Community Section.

Staff Recommendation and Conditions of Approval: Staff recommends the Plan and Zoning Commission approve a resolution recommending to the City Council approval of the amendment to Title 9, Zoning to exempt from general zoning regulations City improvements which promote the public health, safety and welfare.

ATTACHMENTS:

Attachment A	-	Plan and Zoning Commission Resolution
Exhibit A	-	Conditions of Approval
Attachment B	-	Proposed Ordinance Amendment

RESOLUTION NO. PZC-20-010

A RESOLUTION OF THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES, IOWA, RECOMMENDING TO THE CITY COUNCIL THAT IT APPROVE AMENDMENT TO TITLE 9 (ZONING), CHAPTER 3 (GENERAL ZONING PROVISIONS) TO EXEMPT FROM GENERAL ZONING REGULATIONS CITY IMPROVEMENTS WHICH PROMOTE THE PUBLIC HEALTH, SAFETY AND WELFARE

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the City Staff request approval of an Amendment to City Code Title 9, Zoning, Chapter 3, General Zoning Provisions, Section 3, Scope: Modifications and Exceptions, Subsection D, Exceptions and Modifications, to add language that will exempt the City from general zoning regulations for City improvements which promote the public health, safety and welfare; and

WHEREAS, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference; and

WHEREAS, on March 23, 2020, this Commission held a duly-noticed meeting to consider the Amendment to City Code (AO-004657-2020).

NOW, THEREFORE, THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

SECTION 1. The findings, for approval, in the staff report, dated March 23, 2020, or as amended orally at the Plan and Zoning Commission hearing of March 23, 2020, are adopted.

SECTION 2. The AMENDMENT TO CITY CODE (AO-004657-2020) to exempt the City from general zoning regulations for City improvements is recommended to the City Council for approval, subject to compliance with all the conditions in the staff report, dated March 23, 2020, including conditions added at the meeting, and attached hereto as Exhibit "A". Violation of any such conditions shall be grounds for revocation of the permit, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on March 23, 2020.

Erica Andersen, Chair
Plan and Zoning Commission

ATTEST:

Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on March 23, 2020, by the following vote:

- AYES:
- NAYS:
- ABSTENTIONS:
- ABSENT:

ATTEST:

Recording Secretary

Exhibit A
Conditions of Approval
None.

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2019, BY AMENDING TITLE 9, "ZONING", CHAPTER 3, "GENERAL ZONING PROVISIONS", SECTION 3, "SCOPE: MODIFICATIONS AND EXCEPTIONS", SUBSECTION D, "EXCEPTIONS AND MODIFICATIONS", SUBPART "g", IMPROVEMENTS UNDERTAKEN BY THE CITY"

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

SECTION 1: Title 9, "Zoning", Chapter 3, "General Zoning Provisions", Section 3, "Scope: "Modifications and Exceptions", Subsection D, "Exceptions and Modifications" is hereby amended by adding Subpart "g" and the following underlined text:

9-3-3: SCOPE: MODIFICATIONS AND EXCEPTIONS:

D. Exceptions and Modifications:

1. Exceptions and Modifications Enumerated: The regulations specified in this title shall be subject to the following exceptions and interpretations:

g. Improvements Undertaken by the City:

Improvements undertaken by the City which the City Council determines serve a legitimate public purpose, but which may be contrary to or deviate from City zoning regulations shall be exempt from the requirements of the West Des Moines Code of Ordinances. In making its determination, the City Council shall consider:

whether the improvement is necessary or appropriate for the convenience, service or welfare of the general public;

whether there is a feasible alternative for the improvement, considering size, location or other relevant characteristics of the improvement;

the extent to which the improvement is detrimental to adjoining or affected landowners or residents.

The City Council shall weigh these and any other relevant factors and grant the exemption if it determines that, on balance, the benefit of the improvement to the health, safety and welfare of the community is greater than the burden created by exempting the improvement from the Code of Ordinances.

SECTION 2. REPEALER. All Ordinances or parts of Ordinances in conflict with the provision of this Ordinance are hereby repealed.

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

SECTION 4. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, adoption, and publication as required by law.

PASSED AND APPROVED this ____ day of _____, 2020.

Steven K. Gaer, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk