

CITY COUNCIL'S FIRST DRAFT 7/7/2026

DRAFT ORDINANCE NO. 26-030

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to land use and adding a new chapter to Title 18 DMMC entitled "Development Agreements".

WHEREAS, a development agreement is binding upon the parties and their successors and provides assurances to the developer that regulation will not change during the term of the agreement, and

WHEREAS, the Local Project Review Act RCW chapter 36.70B provides specific authority for development agreements, along with WAC 365-196-845, and

WHEREAS, On May 21, 2026, the City submitted the proposed amendment to the Washington State Department of Commerce for its expedited 30-day review and received documentation of completion of the procedural requirement (Submittal ID 2026-S-12852), and

WHEREAS, the SEPA responsible official for the City of Des Moines has determined that the proposed ordinance is categorically exempt in accordance with the requirements of the State Environmental Policy Act (SEPA) under WAC 197-11-800(6) Land Use Decisions, and

WHEREAS, the Des Moines Planning Commission held a duly noticed public hearing on July 7, 2026, and

WHEREAS, based on the careful consideration of the facts and law, the City Council finds that the proposed amendments attached and incorporated herein should be approved as presented; now therefore,

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

Sec. 1. Title.

This chapter shall be entitled "Development Agreements."

Sec. 2. Application.

This chapter shall be applicable to all zones in the City and all zoning actions, as specified in this Title.

Sec. 3. Purpose.

(1) The purpose of this development agreement chapter is to implement RCW 36.70B.170 which authorizes the City to enter into "development agreements" with persons having ownership or control of real property. In adopting such statute, the City Council concurs with the Washington State legislative findings.

(2) Additionally, the City Council finds that development agreements may be appropriate in certain circumstances as a means to consolidate numerous issues involved in complex development projects into a single controlling instrument, benefiting the City, its citizens, and members of the regulated public; and

(3) The City Council finds that the use of development agreements may further the objective of the comprehensive plan and development regulations adopted pursuant to the comprehensive plan.

Sec. 4. Authority.

This chapter is adopted pursuant to RCW 36.70B.170 through 36.70B.210 and other applicable laws.

Sec. 5. Application.

A person, firm, or corporation desiring a development agreement shall make application to the Director on forms approved by the City.

Sec. 6. General provisions.

(1) A development agreement shall be consistent with the applicable policies and goals of the City's comprehensive plan.

(2) A departure requested by the owner from the development standards of this code through a development agreement should be offset by the owner's provision of a benefit to the City of equal or greater value relative to the departure requested, as determined by the City. Equivalent value need not be measured monetarily and the proposed benefit need not be of the same type as the existing development standard requirement. For example, the benefit of a public open space dedication may be considered against the benefit

of a required street improvement. Future economic value to the City may be considered as a benefit.

(3) As applicable, the development agreement must specify the following:

(a) Project components which define and detail the permitted uses, residential densities (minimum and maximum), nonresidential densities and intensities or building sizes;

(b) Design standards such as architectural character/treatment, maximum heights, setbacks, landscaping, drainage and water quality requirements, road standards, and other development features;

(c) Parking;

(d) Provisions for affordable housing, if applicable;

(e) Parks and common open space preservation;

(f) Amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees or dedications;

(g) Mitigation measures, development conditions and other requirements of Chapter 43.21C RCW;

(h) Phasing;

(i) Build-out or vesting periods for applicable standards; and

(j) Other appropriate development requirements or procedures which are based upon a City policy, rule, regulation or standard.

(4) The development agreement shall also include the following:

(a) A preliminary site plan for the entire project, showing locations of critical areas and buffers, required

open spaces, perimeter buffers, property lines, easements, location and range of densities for residential development, and location and size of nonresidential development.

(b) Conceptual plans for open space, recreation, parking, landscaping, lighting and building design.

(5) A development agreement may obligate a party to dedicate land or easements, off-site improvements, or fund or provide services, infrastructure or other facilities.

(6) Subsequently adopted development standards which differ from those of an approved development agreement shall apply to the property subject to the development agreement only where necessary to address a serious threat to public health and safety. Subsequently adopted development standards which differ from those of an approved development agreement also shall apply following expiration of any phase or time period specified in the development agreement during which identified standards cannot be modified.

Sec. 7. Development standards, flexibility.

(1) A development agreement shall be consistent with applicable development regulations to the fullest extent possible; provided, a development agreement may allow development standards different from those otherwise imposed under the Des Moines Municipal Code in order to provide flexibility to achieve public benefits, respond to changing community needs, or encourage modifications that provide the functional equivalent or adequately achieve the purposes of otherwise applicable city standards. Any development standards approved pursuant to a development agreement that differ from those in this code shall not require any further zoning reclassification, variance from City standards or other City approval apart from development agreement approval. The development standards as approved through a development agreement shall apply to and govern the development and implementation of each covered site in lieu of any conflicting or different standards or requirements elsewhere in the Des Moines Municipal Code. Subsequently adopted standards that differ from those of a development agreement adopted by the City as provided in this chapter shall apply to the covered development project only where necessary to address imminent public health and safety hazards or where the development agreement specifies a time period or phase

after which certain identified standards can be modified. Determination of the appropriate standards for future phases which are not fully defined during the initial approval process may be postponed.

(2) A development agreement cannot authorize deviations from the following development standards:

(a) DMMC Title 14 - Buildings and Construction;

(b) Chapter 16.05 DMMC - SEPA, Chapter 16.10 DMMC - Environmentally Critical Areas, Chapter 16.15 DMMC - Flood Hazard Areas, and Chapter 16.20 DMMC - Shoreline Master Program;

(c) Chapter 11.08.060 DMMC - Surface water manuals

Sec. 8. Review process and fees.

(1) A duly noticed public hearing pursuant to RCW 36.70B.200 and recommendation on the development agreement shall be made to the City Council by the Planning Commission. The development agreement shall be subject to review and approval by the City Council based on the record of the Planning Commission hearing. The decision of the City Council to approve or reject a request for a development agreement shall be a discretionary, legislative act.

(2) The Department shall cause written public notice of the public hearing to be mailed to all owners of record of property located within 300 feet of the property that is the subject of the application.

(3) Fees for a development agreement review shall be as established by City schedule and collected at the time of the development agreement application.

Sec. 9. Exercise of City police power and contract authority.

As provided in RCW 36.70B.170(4), the execution of a development agreement is a proper exercise of the City's police

power and contract authority. Accordingly, a development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

Sec. 10. Form.

Development agreements shall be consistent with RCW 36.70B.170 through 36.70B.210. All development agreements shall be in form and content as approved by the City Attorney.

Sec. 11. Enforceability.

The development agreement shall be binding on the parties and their successors. Unless amended or terminated by agreement of both parties to a development agreement, the agreement is enforceable during its term by a party to the agreement. Except as provided in section 6.F. of this ordinance, a development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement. The development agreement shall not be subject to an amendment to a development regulation or a new development regulation adopted after the effective date of the agreement, except as provided in section 6.F. of this ordinance. Applications for building permits and other permits subject to DMMC Title 14, Buildings and Construction, shall be considered under the provisions of DMMC Title 14 that are in effect at the time of submittal of a valid and fully complete application. Any land use decision issued by the City pertaining to the property subject to the development agreement after the execution of the development agreement must be consistent with the agreement.

Sec. 12. Status, recording and amendment of development agreement.

(1) Development agreements are not "project permit applications" as defined in RCW 36.70B.020(4). Therefore, there is no deadline for processing a development agreement.

(2) The owner shall sign the development agreement before the public hearing on the development agreement. If a person or corporation has a "substantial beneficial interest in the

property" as specifically described below, the owner shall submit to the City Manager with the request for development agreement a document stating that such person or corporation concurs in the request and will not object to, contest or appeal any terms and conditions of the approved development agreement. A person or corporation having a "substantial beneficial interest in the property" shall include easement holders, lessees with a lease of one year or more, and persons or corporations with a recorded deed of trust or mortgage on the real property subject to the development agreement. The City Manager shall have the authority to determine whether other persons or corporations with an interest in the real property subject to the development agreement have a "substantial beneficial interest in the property." Within 20 calendar days of receiving written notice that the City Manager has determined that other persons or corporations have a "substantial beneficial interest in the property," the owner shall submit to the City Manager the document described above for each such person or corporation.

(3) The term of development agreements and extensions thereof shall be as follows:

(a) Development agreements may be approved for a maximum period of 20 years.

(b) In determining the appropriate term for a development agreement, the City Council should consider the type, size and location of development and phasing if proposed. The City Council may consider shorter terms with extensions.

(c) If extensions are authorized in a development agreement, the owner must request the extension at least 90 calendar days prior to expiration of the term or any extension. For development agreements associated with land use decisions, the City Manager may grant an extension for up to five years if the owner can satisfactorily show that, for a residential project, at least 50 percent of the residential units are constructed, or for nonresidential and mixed use projects, at least 50 percent of the gross floor area is constructed. All other requests for extensions shall be reviewed by the City Council, unless another process is expressly provided for in the development agreement.

(4) Following approval of a development agreement by the City Council, and execution of the same, the development agreement shall be recorded against the real property records with the King County recorder, at the applicant's expense and a copy provided to the City.

(5) Modifications of development agreements.

(a) The director may approve minor modifications to an existing development agreement. Minor modifications shall not:

(ii) reduce landscaping, buffering, or open space areas;

(iii) reduce setback requirements;

(iv) result in an increase in height of any structure;

(v) result in a change in ingress or egress;

(vi) increase any adverse impacts or undesirable effects;

(vii) significantly alter the project.

(b) All other modifications shall follow the same procedural requirements of the development agreement unless another process is expressly provided for in the development agreement. If approving or modifying the development agreement, the City Council shall authorize the City Manager to execute the amendment on behalf of the City.

Sec. 13. Codification. Sections 1 through 10 of this ordinance shall be codified as a new chapter in Title 18 DMMC entitled "Development Agreements."

Sec. 14. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid

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

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2026 and signed in authentication thereof this ____ day of _____, 2026.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____