AGENDA
DES MOINES PLANNING COMMISSION MEETING

City Council Chambers
21630 11th Avenue S, Suite C
Des Moines, Washington
Tuesday, November 3, 2026 - 6:00 PM

CALL TO ORDER

ROLL CALL

COMMENTS FROM THE PUBLIC

AGENDA ITEMS

Item 1. **Approval of Minutes**
Motion: "I move to approve the minutes for the October 06, 2026 Planning Commission Meeting."

PUBLIC HEARING

Item 1. **Tree Regulation Ordinance**
Motion: "Based on the findings, and in consideration of public input received from the public hearing, the Planning Commission recommends approval of the Draft Ordinance No. 26-128."

UNFINISHED BUSINESS

Item 1. **Development Agreement Ordinance**
Provide direction to City Staff relating to Draft Ordinance No. 26-030 regarding the regulation of Development Agreements or make a recommendation to City Council.

NEW BUSINESS

COMMISSIONER AND DIRECTOR REPORTS

NEXT MEETING DATE

November 05, 2026 City Council Committee of the Whole and Study Session Joint Meeting with Planning Commission

ADJOURNMENT

Planning Commission
AGENDA ITEM

BUSINESS OF THE PLANNING COMMISSION
City of Des Moines, WA

SUBJECT: **Approval of Minutes**

ATTACHMENTS:
1. October 06, 2026 Planning Commission Meeting Minutes

FOR AGENDA OF:
November 3, 2026

DEPT OF ORIGIN:
Administration

DATE SUBMITTED:
October 28, 2026

CLEARANCES:
City Clerk

Purpose and Recommendation
The purpose of this agenda item is for the Planning Commission to review the minutes from the October 06, 2026 Planning Commission meeting.

Motion: "I move to approve the minutes for the October 06, 2026 Planning Commission Meeting."

Background
The City Clerk's Office has prepared action-format meeting minutes for the Planning Commission's consideration.

Alternatives
The Planning Commission may make corrections to errors and approve the meeting minutes as amended.

Recommendation
Staff recommends the Planning Commission approve the meeting minutes as presented.

MINUTES
DES MOINES PLANNING COMMISSION MEETING

City Council Chambers
21630 11th Avenue S, Suite C
Des Moines, Washington
Tuesday, October 6, 2026 - 6:00 PM

CALL TO ORDER

- Chair Barton DeLacy called the meeting to order at 6:00 p.m.

ROLL CALL

Commissioners Present: Danielle Anderson; Chuck Coleman; Michelle Curry; Barton DeLacy; Colleen Gants, Nicole Gunkle

Staff Present: Community Development Director Rebecca Deming; Assistant City Attorney Matt Hutchins; Planning & Development Services Manager Laura Techico; Senior Planner Jason Woycke; Land Use Planner II Peyton Murphy; and Deputy City Clerk Sara Lee

COMMENTS FROM THE PUBLIC

- Dave Kaplan, Port of Seattle - Tree Ordinance
- Daniel K. Olson, Resident - Downtown Planning
- Anne Jacobson, Resident - Zoning
- Victoria Nichols, Resident - Zoning/Planning
- Will Scharf, Resident - Zoning
- Brandion Boxers, Resident - Zoning of Property Near Brown Bear

AGENDA ITEMS

Item 1. **Approval of Minutes**
Motion: "I move to approve the minutes for the July 7, 2026 Planning Commission Meeting."

Direction/Action

Motion made by Commissioner Colleen Gants to approve the July 7, 2026 Planning Commission Meeting Minutes, seconded by Commissioner Michelle Curry.
Motion 6-0.

UNFINISHED BUSINESS

Item 1. **Downtown Planning Scenarios & Zoning Workshop**

- Consultants Ian Cozier and Morgan Shook from EcoNorthwest provided a PowerPoint presentation and facilitated a workshop with the Planning Commission regarding Downtown Planning Scenarios and Zoning.

NEW BUSINESS

Item 1. **Discussion of Tree Regulations**
Provide direction to City Staff for development of tree removal, retention, and replacement ordinance.

- Land Use Planner II Peyton Murphy provided a PowerPoint presentation on Tree Regulations and facilitated a discussion with the Planning Commission.

COMMISSIONER AND DIRECTOR REPORTS

- There were no Commissioner or Director reports.

NEXT MEETING DATE

November 3, 2026

ADJOURNMENT

Direction/Action
Motion made by Chuck Coleman to adjourn; seconded by Nicole Gunkle.
Motion 6-0

The meeting adjourned at 8:43 p.m.

Planning Commission
AGENDA ITEM

BUSINESS OF THE PLANNING COMMISSION
City of Des Moines, WA

SUBJECT: **Tree Regulation Ordinance**

ATTACHMENTS:
1. Draft Ordinance No. 26-128

FOR AGENDA OF:
November 3, 2026

DEPT OF ORIGIN:
Community Development

DATE SUBMITTED:
October 26, 2026

CLEARANCES:
Community Development

Purpose and Recommendation

The purpose of this agenda item is for the Planning Commission to hold a Public Hearing and make a recommendation to City Council on Draft Ordinance No. 26-128 Tree Regulations.

Motion: "Based on the findings, and in consideration of public input received from the public hearing, the Planning Commission recommends approval of the Draft Ordinance No. 26-128."

Background

Tree canopy is an important way to mitigate the impact of rising temperatures due to climate change. In June 2026, staff presented a Tree Policy Memo for discussion and received direction from the Planning Commission. The proposed ordinance does not include critical areas (such as wetlands or hillsides) as this is covered under the City's Critical Area Ordinance in the Municipal Code. Trees on public property are managed separately by the Public Works Department, primarily in connection with stormwater infrastructure and maintenance.

On October 6, 2026, the draft Tree Regulations were presented to the Planning Commission, and direction was provided to further refine and return for a Public Hearing on November 3, 2026.

Discussion
The proposed Ordinance has minor changes from previously discussed drafts, taking into account feedback from the October 6, 2026, Planning Commission meeting. Changes include:

For Exemptions:
In non-development scenarios, allowing for two trees to be removed on private, single-family properties with a waived fee.

For Tree Retention:
Standards only apply to developable areas, excluding critical area, critical area buffers, and right-of-way.

For Minimum Tree Credits:
Required tree credits are divided between Residential (1 credit required per 5,000 square feet of developable area) and Commercial (0.5 credits required). The Chart was updated to show only Residential and Commercial/Industrial.

Lots are required to meet a minimum amount of tree credits when proposing construction of a new detached or attached structure exceeding 1,000 square feet of gross square footage or larger.

Replacement Ratio:
The existing provisions have a 3:1 penalty replacement ratio for trees identified to be retained that are removed during development activity A fine is also applicable for trees identified to be retained that are removed during construction.

Permit Application:
Language added regarding permit application requirements and expiration and extension of permits.

Findings

1. Pursuant to RCW 36.70A.106, the draft regulations were forwarded to Commerce - Growth Management Services on October 26, 2026.
2. The proposed amendments are categorically exempt from the requirement for a SEPA determination under WAC 197-11-800(6) Land Use Decisions.
3. The Planning Commission considered the proposed amendments and held a public hearing on the draft regulations at their November 3, 2026, meeting.
4. Following consideration of public comment received for the public hearing, the Planning Commission voted to recommend Council approval of the draft amendments. ….(TBD)…..
5. The proposed amendments are consistent with the procedures established in DMMC 18.20, Type VI Land Use Action and DMMC 18.30 Amendments to the Zoning Code.
6. The proposed amendments are in compliance with the Comprehensive Plan.

Alternatives

1. Recommend approval of proposed ordinance as provided
2. Recommend approval of proposed ordinance with amendments
3. Recommend council not approve the proposed ordinance

Financial Impact

Unknown

Recommendation

Based on the findings above, and in consideration of public input received for the public hearing, staff recommends approval of the draft ordinance as provided herein.

CITY ATTORNEY'S FIRST DRAFT 10/27/2026

DRAFT ORDINANCE NO. 26-128

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to trees; regulating tree removal, retention, and replacement outside of critical areas; amending DMMC 16.25.010 and 16.25.020; repealing and replacing DMMC 16.25.030, 16.25.040, 16.25.050, 16.25.060, 16.25.070, 16.25.080, 16.25.090, 16.25.100, 16.25.110, and 16.25.120; and repealing DMMC 16.25.085.

WHEREAS, In 2024 The Puget Sound Climate Preparedness Collaborative was awarded a three-year federal grant from the National Oceanic and Atmospheric Administration to expand climate adaptation learning, collaboration, and technical support opportunities for Puget Sound jurisdictions and Tribes. As part of the grant, the Collaborative launched a Small Communities Cohort Program (SCCP) designed to provide shared staffing and consulting support for climate preparedness projects led by Tribes and smaller, less-resourced jurisdictions across the Puget Sound region, and

WHEREAS, the program supported Des Moines in completing tree canopy policy research. Knowing what other cities and jurisdictions across the Puget Sound are doing to maintain tree canopy on private property allowed Des Moines to have stronger tree retention and urban tree canopy cover codes, and

WHEREAS, Tree canopy is an important way to mitigate the impact of rising temperatures due to climate change. Shaded pavement can experience temperature reductions of up to 6°C compared to unshaded surfaces, while large green spaces can create cooling effects that extend 50 to 500 meters into surrounding areas, and

WHEREAS, On October 26, 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-15614), 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 November 3, 2026, and

WHEREAS, based on 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. DMMC 16.25.010 and section 1 of Ordinance No. 1611 are each amended to read as follows:

Title.

This chapter shall be entitled "Tree removal, retention, and replacement."

Sec. 2. DMMC 16.25.020 and section 2 of Ordinance No. 1611 are each amended to read as follows:

Application.

Standards set forth in this section apply to all tree removals in development and non-development scenarios, except those exempted by this chapter, or allowed under Chapter 16.10 Environmentally Critical Areas.

Sec. 3. DMMC 16.25.030 and section 3 of Ordinance No. 1611 are each repealed, and the following is substituted:

Purpose.

The purpose of this chapter is to provide minimum standards for tree retention to foster a healthy and attractive community; to increase canopy cover in an equitable matter across Des Moines; to maintain a positive community image; to improve the aesthetic quality of the built environment; to enhance quality of life; to protect and enhance property values; to promote retention and protection of existing vegetation; to reduce the impacts of development on drainage systems and natural habitats; to absorb

wind and noise; to enhance air quality; to conserve valuable water resource; and to increase privacy within residential zones by:

(1) Retaining existing significant trees by incorporating them into site design.

(2) Promoting land development practices that result in minimal adverse disturbance to existing vegetation and soils within the City while at the same time recognizing that certain factors such as condition (including disease, danger of falling, etc.), proximity to existing and proposed structures, and the realization that reasonable enjoyment of a property many require the removal of certain trees or ground cover.

(3) Protecting trees during construction activities from damage to tree roots, trunks, and branches.

(4) Absorbing greenhouse gases, mitigation climate change, and removing air pollution.

(5) Providing wildlife habitat, and

(6) Maintaining and increasing tree canopy equitably within Des Moines.

Sec. 4. DMMC 16.25.050 and section 5 of Ordinance No. 1611 are each repealed, and the following is substituted:

Definitions.

As used in this Title, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

"Coverage" is defined as the ration of the dripline area to the lot area expressed as a percentage.

"Director" is the Director of the City of Des Moines Community Development Department.

"Dripline area" is the area under the outermost circumference of branches of the tree.

"Fee-in-lieu" where use of a fee-in-lieu is approved by the Director, the fee shall be paid into the City's urban forestry fund established in DMMC § 3.51.150. The fee shall be established based on the number of trees being satisfied as follows: The fee for each tree shall cover the cost of a tree of the required size and type, installation (labor and equipment), maintenance for two years, and fund administration.

"High-risk tree" is any tree that has been certified in a written arborist report as possessing the following ISA Tree Risk Assessment characterizations:

(1) The tree has a probable or imminent likelihood of failure; and

(2) The tree has a medium or high likelihood of impact; and

(3) The consequences of failure for the tree are significant or severe

"Significant tree" healthy evergreen trees six inches in diameter or greater as measured at 54 inches above the ground and healthy deciduous trees (excluding alders, European ashes, cottonwoods, and willows) eight inches in diameter or greater as measured 54 inches above the ground

"Retained tree" is defined as an existing tree designated for retention, excluding cottonwood and alders, that is less than 12 inches in diameter measured 54 inches above grade, but greater than six feet tall if evergreen, or two inches in diameter if deciduous. Retained trees must have a live crow ratio of greater than or equal to 50 percent.

"Qualified Professional" as used in this chapter is defined as an individual though any combination of knowledge, experience, education, and training demonstrates a professional level of understanding in tree care, arboricultural sciences, and urban forestry. Qualified professionals must be professionally employed in a relevant field and possess the ability to evaluate the health and hazard potential of existing trees, and the ability to prescribe appropriate measures necessary for the preservation of trees during land development. Qualified professionals may include

landscape architects, certified arborists, and certified foresters.

Sec. 5. DMMC 16.25.060 and section 6 of Ordinance No. 1611 are each repealed, and the following is substituted:

Exemptions.

The following activities and uses are exempt from this Chapter:

(1) City owned lands, including parks and City owned public street rights of way, which are regulated by Chapter 12.05 Use and Maintenance of Public Rights-of-Way.

(2) Removal of trees below six (6) inches diameter at standard height.

(3) Removal of trees by the City of Des Moines, emergency responders, or public or private utilities in situations involving danger to life or property, substantial fire hazards, or interruption of utility services.

(4) Emergency tree work: if a tree removal permit cannot be obtained before emergency tree work, a retroactive permit shall be obtained within fourteen (14) calendar days following the tree removal, unless the removal is exempt pursuant to subsection 2 of this section. Or, in the following situations:

(a) Removal of trees by property owner in emergency situations involving "imminent likelihood of failure" and "high likelihood of impacting the target" and "significant to severe consequences" using the ISA Basic Tree Risk Assessment process, substantial fire hazards, or interruption of utility services. It is the responsibility of the property owner or tenant to have a qualified tree professional document the reason for emergency removal with a qualified tree risk assessment report, as well as provide documentation of the emergency removal, including photos or a qualified tree risk assessment report; or

(b) Removal of dead trees that overhang a constant and immovable target (such as a house), that could result in

significant to severe consequences held to the same standard of proof and documentation described in (i) above.

(5) Trees located in critical areas or associated buffers which are regulated by Chapter 16.10 DMMC.

(6) Trees reviewed under a preapproved tree maintenance and replacement program that meets equal intent of this title, as approved by the Director.

Sec. 6. DMMC 16.25.070 and section 7 of Ordinance No. 1611 are each repealed, and the following is substituted:

Tree Removal- Not associated with development activity.

(1) The following criteria shall apply to significant tree removal not associated with development activity. A tree removal permit not associated with development shall be granted when one or more of the following criteria are met:

(a) Removal of tree(s) for the purpose of replacing dead significant trees.

(c) Removal of dying, diseased, hazard, or high-risk trees. Written recommendations from a qualified professional are required.

(d) Removal of tree(s) for purpose of thinning a heavily wooded area where remaining trees may benefit by thinning and the site's overall appearance or function is maintained. Written recommendation from a qualified professional are required.

(e) Removal of trees for the purpose of mitigating wildfire risk.

(f) Removal of tree (s) by the Port of Seattle meeting the definition of airport hazard under RCW 14.12.020 or meeting the definition of public nuisances under RCW 7.48.230.

(2) Tree replacement is required utilizing the City's adopted tree credits, as outlined in DMMC 16.25.090

(3) On single-family residential properties, removal of up to two (2) significant trees within a one-year period may be permitted with a waived fee, provided the removal is conducted in accordance with the following requirements;

(a) There is no active land use development permit for the subject site

(b) A tree removal permit application is applied for prior to tree removal.

(c) The tree proposed for removal is not one of the only two (2) significant trees remaining on the lot, unless it is identified as a high-risk tree, as confirmed by a qualified professional.

(d) In conducting minor tree removal activities, rights-of-way shall remain unobstructed unless a right-of-way use permit is obtained

Sec. 7. DMMC 16.25.080 and section 8 of Ordinance No. 1611 are each repealed, and the following is substituted:

Tree Removal- Associated with development activity

(1) All trees removed during development activity require permitting and review, unless otherwise exempted by this title.

(2) Lots under 4,000 square feet are exempt from meeting the required tree credits with existing trees. These lots can meet the minimum required tree credits associated with development activity, either through tree replacement or fee-in-lieu.

(3) If the lot does not have sufficient significant or exceptional trees to meet tree retention requirements, then any existing healthy trees shall be retained provided the lot exceeds 4,000 square feet.

(4) Retention Plans:

(a) For tree removal associated with a development, the applicant shall submit a Tree Retention Plan with the Land Use Application that shall consist of:

(i) Location and species of each significant tree at an accuracy of five (5) feet or less, or included on survey.

(ii) All trees proposed for removal clearly noted on the plan.

(iii) Location of trees within thirty (30) feet of any clearing or grading activity.

(iv) Trees labeled on all plan sheets with numbers to correspond to physical tags on trees.

(v) Location of critical root zones.

(b) A report by a qualified professional documenting current health of all significant trees in the proposed development area and within 25 feet of the bounds of any development.

(c) Narrative description of feasibility of tree retention, and description of all tree protection measures and any special requirements to protect significant trees throughout construction, including but not limited to alternative excavation methods, irrigation, mulch, monitoring etc.

(5) Any tree identified to be retained that is damaged, altered, or removed during development activity is subject to replanting at 3:1 ratio, and a penalty as set forth by the approved Department fee schedule.

(a) Each significant tree shall be clearly marked on site with identifiable tags, and a notice of penalty associated with removal shall be affixed to the closest fence panel or on the tree itself in a manner that does not damage the tree. Signs must be clearly visible and maintained throughout the duration of development activity.

(b) All clearing and grading shall take place outside of the dripline of the trees identified to be retained; provided that the Community Development Department may approve hand clearing within the dripline if it can be appropriately demonstrated that such work can occur without damaging the tree or roots. If roots are damaged, the Community Development Department may require additional restoration measures and damage may be subject to a penalty.

(c) Protective fencing may be required at the dripline of the tree through the duration of construction, at the discretion of the Director or designee.

Sec. 8. DMMC 16.25.090 and section 9 of Ordinance No. 1611 are each amended to read as follows:

Minimum Tree Credits.

(1) A minimum tree credit density shall be maintained on each lot as specified in the table below, regardless of development status. The tree credits may consist of existing significant trees, replacement trees, or a combination thereof. Any tree credit calculation resulting in a fraction of a tree shall be rounded up.

(2) Calculating tree credits:

(a) Tree retention standards apply to developable area which excludes critical areas and their buffers and public rights-of-way.

(b) A survey of existing trees may be required to calculate tree credits.

Table A Required Minimum Tree Credits

Zones	Required minimum tree credits per 5,000 square feet of developable area, not exceeding 2 per 10,000 square feet

Residential: (RS-4000, RS-7200, RS-8400, RS-9600, RA-3600, RM-2400, RM-1800, RM-900, RM-900A, RM-900B, R-SE, R-SR, PR-R,)	1
Commercial; (N-C, I-C, B-P, D-C, PR-C, T-C, W-C)	0.5

(3) Any trees planted to meet landscaping requirements of Chapter 18.195 Landscaping and Screening shall count towards minimum tree credits, provided they meet the planting standards.

(4) Trees within a critical area or associated buffer may not count towards that lots required minimum tree credits.

(5) Trees growing on a surveyed property line may count towards one half (0.5) a tree credit for each bordering lot.

(6) Tree credits shall be assessed in the following priority:

(a) First, existing healthy trees

(b) Second, replacement trees

(c) Last, fee-in-lieu will count as maximum one tree credit. Additional fee-in-lieu subject to City Manager or designee discretion.

(7) Any lot that does not meet the required minimum tree credits that is not exempt per DMMC 16.25.060 shall be required to be brought into conformance when the following thresholds are met:

a. Construction of a new structure, attached to existing structure or detached, exceeding 1000 square feet of gross square footage or larger

(8) Minimum Tree Credits for Land Divisions

(a) The required minimum tree credits shall be applied to the developable area of the short plat or subdivision.

Each new lot requires a minimum of two tree credits per lot.

(b) Planting schedule may be included as a condition of approval on land divisions, and may be required at time of construction, as applicable and determined by the Director or designee

(9) Non-significant existing healthy trees, including ornamental trees between one and six inches in diameter at 54 inches above grade may count as 0.5 credit per retained tree, not to exceed 1 (one) credit, in lieu of replacement trees.

Sec. 9. DMMC 16.25.100 and section 10 of Ordinance No. 1611 are each amended to read as follows:

Tree Replacement.

Trees required to be replaced shall be replaced according to provisions of this section.

(1) The applicant shall submit a replacement plan prepared by a qualified professional that demonstrates tree installation will meet the minimum standards of this section. A tree replacement plan can be a component of the landscape plan, or a standalone plan.

(2) Replacement trees shall be placed on the property where the significant trees were removed. In cases of development associated with land division, replacement trees shall be placed on each created lot, as outlined in Title 17. Off-site planting in lieu of planting on the project site is not permitted.

(3) Any significant healthy tree removed as part of a development requires a ratio of 4:1 or to the minimum tree credits required in DMMC 16.25.090, whichever is higher.

(4) Any tree removed not associated with development activity that exceeds the allowance for removal set in DMMC 16.25.070 will require replacement in accordance with the standards in this section.

(5) Replacement trees shall be planted:

(a) To reestablish or enhance areas where trees previously existed

(b) In locations appropriate to the species growth habit and horticultural requirements

(c) Away from infrastructure, both public and private, considering full growth and root spread

(d) To provide screening from adjacent properties

Sec. 10. DMMC 16.25.110 and section 11 of Ordinance No. 1611 are each amended to read as follows:

Permitting.

All tree permit applications shall be submitted with a complete application form as prescribed by the Director and with all required fees. An application for tree permit shall include the following information:

(1) The applicant shall give the name, address, and contact information of the owner of the property, (and applicant if different than the property owner)

(2) The applicant must provide a site plan with proposed trees to be removed or retained clearly identified and differentiated with appropriate markers.

(3) Species of trees to be removed, and any replacement trees

(4) Method of removal and any temporary erosion and sediment control measures necessary

Sec. 11. DMMC 16.25.120 and section 12 of Ordinance No. 1611 are each amended to read as follows:

Permit Expiration Extension.

(1) Except when specific time limits are set by the Director, any permit granted under this chapter shall expire one year from the date of issuance.

(2) Additional considerations for timeline may be set on a project-specific basis at the discretion of the Director. Such reasons may include but are not limited to environmental, weather, and coordination with other site work.

(3) Upon showing of good cause, a permit may be extended for six months. Approved plans shall not be amended without a revision application.

Sec. 12. DMMC 16.25.085 and section 1 of Ordinance No. 1694 are each repealed.

Sec. 13. 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. 14. 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: _____

Planning Commission
AGENDA ITEM

BUSINESS OF THE PLANNING COMMISSION
City of Des Moines, WA

SUBJECT: **Development Agreement Ordinance**

ATTACHMENTS:
1. Draft Ordinance No. 26-030

FOR AGENDA OF:
November 3, 2026

DEPT OF ORIGIN:
Community Development

DATE SUBMITTED:
October 23, 2026

CLEARANCES:
Community Development

Purpose and Recommendation

The purpose of this agenda item is for the Planning Commission to consider the proposed Development Agreement Draft Ordinance No. 26-030 and make a recommendation to City Council.

Provide direction to City Staff relating to Draft Ordinance No. 26-030 regarding the regulation of Development Agreements or make a recommendation to City Council.

Strategic Plan Priority

Economic Vitality - Create an atmosphere where Des Moines is recognized as a great place for business investment.

Background

Staff is proposing an Ordinance to regulate Development Agreements. The Local Project Review Act RCW chapter 36.70B provides specific authority for development agreements, along with WAC 365-196-845. A development agreement is a voluntary contract between a local jurisdiction and a person(s) who owns or controls property within the jurisdiction, detailing the obligations of both parties and specifying the standards and conditions that will govern development of the property.

Codifying this process provides regulatory certainty and transparency to the development community that standards will not change mid-project for multi-year

buildouts, allows for customized design standards and phasing for complex or unique projects, and provides a mechanism by which the City may require impact mitigation, including commitments for infrastructure and financing.

The Planning Commission reviewed the drafted Ordinance and held a public hearing on July 7, 2026. The Planning Commission recommended approval of the draft ordinance with minor modifications.

The City Council discussed the Ordinance at the August 27, 2026 meeting and moved the ordinance to a second reading with direction to staff to add proposed language relating to:

- Development Agreement Assignment
- Revocation by the City due to Performance
- Cure non-performance

The City Council discussed the Ordinance at the September 24, 2026 meeting and voted for the Ordinance to return to Planning Commission for review and recommendation prior to returning to City Council.

Discussion

City staff are proposing a Draft Ordinance which includes a new chapter to DMMC Title 18 entitled “Development Agreements” to create regulations and process for all development agreement applications and their review and approval. With the proposed ordinance, all development agreements shall include (as applicable):

- Project components which define and detail the permitted uses, residential densities (minimum and maximum), nonresidential densities and intensities or building sizes
- Design standards such as architectural treatment, maximum heights, setbacks, landscaping, drainage and water quality requirements, road standards, and other development features
- Parking
- Provisions for affordable housing, if applicable
- Parks and common open space preservation
- 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
- Mitigation measures, development conditions and other requirements of Chapter 43.21C RCW
- Phasing
- Build-out or vesting periods for applicable standards
- Other appropriate development requirements or procedures which are based upon a City policy, rule, regulation or standard
- A preliminary site plan for the entire project, showing locations of critical areas and buffers, required open spaces, perimeter buffers, location and range of

densities for residential development, and location and size of nonresidential development
- Conceptual plans for open space, recreation, parking, landscaping, lighting and building design

Additionally, the proposed Ordinance clarifies that a development agreement cannot authorize a deviation from:

- Building Codes
- Environmental Requirements/SEPA
- Surface Water Requirements

The proposed Ordinance requires development agreements to have a public hearing and recommendation from the Planning Commission with approval by the Council. The Public Hearing requires notice to all property owners within 300 feet of the subject property.

The Ordinance establishes a standard process for development agreements, making clear to applicants what to expect both from the process itself and with respect to what must be included in a development agreement. The Ordinance also clarifies the limitations that apply to development agreements. Each agreement would remain specific to the individual project and site, and Council would retain authority over the terms of the agreement within the parameters established by this Ordinance. For example, based on the type, size, location, and phasing of a project, Council could require a development agreement with a ten-year term, with or without extensions, but could not approve a twenty-five-year term, because the proposed Ordinance sets a limit of twenty years.

Staff added the proposed Sections 9, 10, and 11 as shown below in order to address Council concerns from the August 27th Council meeting.

Sec. 9. Specific Performance
The parties specifically agree that damages may not be an adequate remedy for breach of a Development Agreement, and that the City is entitled to compel specific performance of all material terms of the Development Agreement by party in default hereof.

Sec. 10. Assignment
A Development Agreement shall be binding and inure to the benefit of the parties. The original party shall not assign its rights under the Development Agreement without written consent of the City. Any assignment of the Development Agreement will be at the sole discretion of the City.

Sec. 11. Termination
A Development Agreement shall expire and be of no further force and effect if the Developer does not construct the project as described in the Development Agreement, or submits applications for development of the project site that are inconsistent with the

development agreement as determined in the City's sole reasonable discretion; or for a breach of the Development Agreement as determined in the City's sole reasonable discretion.

A comment letter from a commercial real estate practitioner was submitted to the City Council. Several areas of concern were identified and considered below:

- Technical errors: The identified scrivener's errors were corrected.
- Peer-city comparison: While no standardization was identified between cities, the information considered by the Planning Commission included code research into the cities of Edmonds, Kenmore, Kent, Mukilteo, North Bend, Poulsbo, SeaTac and University Place.
- Policy choices: As indicated, cities have taken meaningfully different approaches to the development standards included in their development agreement codes. The items included in Draft Ordinance No. 26-030 are all identified by RCW 36.70B.170 as permissible to regulate through a development agreement process.

Staff has not made any changes to the proposed Ordinance from the draft ordinance presented to Council on September 24, 2026, when the Ordinance was referred back to the Planning Commission for review and recommendation.

Alternatives

1. Recommend Approval of the proposed ordinance as provided
2. Recommend Approval of the proposed ordinance with amendments
3. Do not recommend approval the proposed ordinance

Financial Impact
Unknown

Recommendation
Provide direction to City Staff relating to Draft Ordinance No. 26-030 regarding the regulation of Development Agreements or make a recommendation to City Council.

CITY COUNCIL'S SECOND DRAFT 9/2/2026

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 materials.

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~~ DMMC Section 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. Specific Performance

The parties specifically agree that damages may not be an adequate remedy for breach of a Development Agreement, and that

the City is entitled to compel specific performance of all material terms of the Development Agreement by party in default hereof.

Sec. 10. Assignment

A Development Agreement shall be binding and inure to the benefit of the parties. The original party shall not assign its rights under the Development Agreement without written consent of the City. Any assignment of the Development Agreement will be at the sole discretion of the City.

Sec. 11. Termination

A Development Agreement shall expire and be of no further force and effect if the Developer does not construct the project as described in the Development Agreement, or submits applications for development of the project site that are inconsistent with the development agreement as determined in the City's sole reasonable discretion; or for a breach of the Development Agreement as determined in the City's sole reasonable discretion.

Sec. 12~~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. 13~~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. 14~~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(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(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. 15~~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:

(i~~i~~) reduce landscaping, buffering, or open space areas;

(ii~~i~~) reduce setback requirements;

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

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

(v~~i~~) increase any adverse impacts or undesirable effects;

(vi~~i~~) 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. 16~~13~~. Codification. Sections 1 through ~~10~~ 15 of this ordinance shall be codified as a new chapter in Title 18 DMMC entitled "Development Agreements."

Sec. 17~~14~~. 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. 18~~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: _____