

ORDINANCE NO. 1523

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON,** relating to the City's Flood Hazard Areas Code, adding a new section to chapter 14.40 DMMC requiring development permit applicants within special flood hazard areas to comply with federal and state environmental permit requirements, amending DMMC 14.40.080, and codifying a new section as DMMC 14.40.195.

**WHEREAS,** the National Marine Fisheries Services (NMFS) has issued a Biological Opinion that asserts the Federal Emergency Management Agency (FEMA) is not in compliance with the Endangered Species Act (ESA), and

**WHEREAS,** FEMA has agreed to modify the National Flood Insurance Program (NFIP) to include provisions for assessing biological and habitat impacts to comply with the ESA, and

**WHEREAS,** FEMA has notified all jurisdictions in the Puget Sound region of implementation requirements to be compliant with the ESA and maintain its participation in the NFIP, and

**WHEREAS,** FEMA requires the City of Des Moines to demonstrate compliance with the ESA by September 23, 2011 to maintain its participation in the NFIP, and

**WHEREAS,** FEMA has three different options that it will accept to demonstrate compliance with the ESA, and

**WHEREAS,** The City of Des Moines may either adopt a model ordinance, use a FEMA developed checklist to determine if existing and proposed city standards and policies meet or exceed federal standards, or analyze projects for compliance with ESA requirements on a "permit-by-permit" basis which will require applicants to provide a habitat assessment or obtain concurrence from NMFS, and

**WHEREAS,** The City of Des Moines has relatively few properties and acreage located within floodplain areas by comparison to most jurisdictions in the Puget Sound region and it is least cumbersome to review those projects proposing to be located in floodplains for compliance with new ESA requirements individually, and

**WHEREAS,** the Council Environment Committee met on June 9, 2011 and determined that the City should comply with FEMA

requirements by analyzing projects for compliance on a "permit-by-permit" basis, and

**WHEREAS**, FEMA requires that jurisdictions choosing to analyze projects within floodplains for ESA compliance on a "permit-by-permit" basis explain how compliance is established by code, policy, and procedure, and

**WHEREAS**, adding provisions to the City's Flood Hazard Areas Code (chapter 14.40 DMMC) will establish sufficient City policy and procedure demonstrating compliance with ESA requirements, and

**WHEREAS**, notice of the public hearing was given to the public in accordance with law and a public hearing was held on the September 8, 2011, and all persons wishing to be heard were heard, and

**WHEREAS**, on September 8, 2011, the City Council voted 6-0 to pass Draft Ordinance No. 11-179 to a second reading to occur on October 27, 2011, and

**WHEREAS**, pursuant to DMMC 18.56.080, amendment of the building and construction code (Title 14 DMMC) is a legislative (Type VI) land use decision, and

**WHEREAS**, the textual code amendments proposed by this Ordinance are exempt from the requirements of SEPA pursuant to WAC 197-11-800(19), 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.** A new section is added to chapter 14.40 DMMC, as DMMC 14.40.195, to read as follows:

**14.40.195 Compliance with federal and state permits required.** No approval of an application for a development permit within an area of special flood hazard shall be issued without first demonstrating compliance with all necessary federal and state environmental permit requirements, including, but not limited to, Clean Water Act, 33 U.S.C. 1344, Section 404 permits and Endangered Species Act, 16 U.S.C. 1531, Section 10 permits.

**Sec. 2.** DMMC 14.40.080 and section 178 of Ordinance No. 1407 are each amended to read as follows:

**Establishment of development permit.** A development permit shall be obtained before construction or development begins within any area of flood hazard established in DMMC 14.40.030. The permit shall be for all structures including manufactured homes and for all other development including fill and other activities. Application for a development permit shall be made on forms furnished by the local administrator and shall include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, on-site storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information shall be furnished by the applicant:

(1) Elevation, in relation to mean sea level of the lowest floor (including basement) of all structures; and

(2) Elevation in relation to mean sea level to which any structure has been floodproofed; and

(3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in DMMC 14.40.150; and



**Sec. 5. Effective date.** This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

**PASSED BY** the City Council of the City of Des Moines this 27th day of October, 2011 and signed in authentication thereof this 27th day of October, 2011.



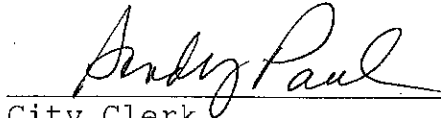
M A Y O R

APPROVED AS TO FORM:



Assistant City Attorney

ATTEST:



City Clerk

Published: November 1, 2011

LEGAL NOTICE  
SUMMARY OF ADOPTED ORDINANCE  
CITY OF DES MOINES

ORDINANCE NO. 1523, Adopted October 27, 2011.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to the City's Flood Hazard Areas Code, adds a new section to chapter 14.40 DMMC requiring development permit applicants within special flood hazard areas to comply with federal and state environmental permit requirements, amends DMMC 14.40.080, and codifies a new section as DMMC 14.40.195.

The full text of the Ordinance will be mailed without cost upon request.

Sandy Paul, CMC  
City Clerk

Published: November 1, 2011