

Ordinance Summary published in the Legal Record on _____ and the full text of the Ordinance made available at www.desotoks.us for a minimum of 1 week from the date of publication

Ordinance No. 2388 Summary

On September 17, 2015, the City of De Soto, Kansas, adopted Ordinance No. 2388, granting a Special Use Permit for a period of twenty years, with one-year renewal periods thereafter, to Harp's Food Stores, Inc. for locating and maintaining an Electronic Variable Message Board as part of its grocery store project on a 5.44-acre tract of land, located on the north side of Commerce Drive approximately 1,000 feet east of Lexington Avenue, De Soto, Kansas. A complete copy of this ordinance may be obtained or viewed free of charge at the Office of the City Clerk at City Hall, 32905 West 84th Street, De Soto, Kansas or at www.desotoks.us. This summary is certified by Patrick G. Reavey, De Soto City Attorney pursuant to K.S.A. 12-3001, et seq.

ORDINANCE NO. 2388

AN ORDINANCE PROVIDING FOR A SPECIAL USE PERMIT FOR HARP'S FOOD STORES, INC. TO LOCATE AND MAINTAIN AN ELECTRONIC VARIABLE MESSAGE BOARD AS PART OF ITS GROCERY STORE PROJECT ON A 5.44-ACRE TRACT OF LAND, LOCATED ON THE NORTH SIDE OF COMMERCE DRIVE APPROXIMATELY 1,000 FEET EAST OF LEXINGTON AVENUE, WITHIN THE CITY OF DE SOTO, JOHNSON COUNTY, KANSAS

WHEREAS, proper application has been made by Harp's Food Stores, Inc. (hereinafter referred to as "Permittee") for a Special Use Permit to locate and maintain an Electronic Variable Message Board ("EVMB") as part of its grocery store project to be built on a 5.44-acre tract of land, located on the north side of Commerce Drive approximately 1,000 feet east of Lexington Avenue, De Soto, Kansas; and

WHEREAS, an EVMB is allowed as a special use on the property where Permittee wants to locate the sign; and

WHEREAS, the Planning Commission of the City of De Soto, Kansas did hold a public hearing after proper publication of notice and proper service of notice upon property owners within 200 feet of the property which shall be subject to the requested Special Use Permit; and

WHEREAS, the Planning Commission recommended that the Special Use Permit be approved, and without any term, but, based on recommendation from Staff, the governing body believes a 20-year term, with one-year renewal terms thereafter, is appropriate.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DE SOTO, KANSAS:

Section 1. Basis of Decision. That the Governing Body, in making its decision on the application for special use permit, considered the evidence forwarded to it by the City Planning Commission, and the specific Standards for EVMBs contained within Article 10 of the City's Zoning Regulations, as well

as the following general criteria for Special Use Permits contained in the City's Zoning Regulations and as required by Kansas law:

- A. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.
- B. The nature and intensity of the proposed use and its compatibility with the zoning and uses of nearby properties. Such determination should include the location, nature, and height of structures walls, fences, and other improvements connected with the proposed use, their relation to adjacent property and uses, and the need for buffering or screening.
- C. The extent to which there is a need in the community for the proposed use.
- D. The availability and adequacy of required utilities and services to serve the proposed use. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services.
- E. Adequacy of ingress and egress to and within the site of the proposed use, traffic flow and control, the adequacy of off-street parking and loading areas, the adequacy of required yard and open space requirements and sign provisions.
- F. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the proposed use, or present parking problems in the vicinity of the property.
- G. The environmental impacts that the proposed use would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm.
- H. The economic impact of the proposed use on the community.
- I. The extent to which the proposed use may detrimentally affect nearby property.
- J. The relative gain (if any) to the public health, safety, and welfare from a denial of the application for special use permit as compared to the hardship imposed upon the special use applicant from such denial.
- K. Consistency with the Comprehensive Plan, Utilities and Facilities Plans, Capital Improvement Plan, Area Plans, ordinances, policies, and applicable City Code of the City of De Soto and the general safety, health, comfort and general welfare of the community.
- L. The recommendation of professional staff.

Section 2. Special Use Permit for an EVMB. That the Governing Body hereby grants a Special Use Permit to Permittee for an EVMB to be located on the land legally described in the attached **Exhibit A**, and generally located on the north side of Commerce Drive approximately 1,000 feet east of Lexington Avenue, De Soto, Kansas, said EVMB to be located in conformance and pursuant to the specific guidelines contained in Subsection M of Section 4 of Article 10 of the City's Zoning Regulations.

Section 3. Term of Permit. This Special Use Permit is granted for a period of twenty (20) years from the effective date of this Ordinance, but after the expiration of the twenty (20) year period, the Permit will automatically be extended for one (1) year periods unless the Governing Body provides at least a ninety (90) day written notice to Permittee that the Permit will end upon the expiration of the

then current one (1) year renewal period.

Section 4. Revocation. The effectiveness of this Special Use Permit is conditioned upon the strict compliance by the Permittee with the provisions contained herein and in the City of De Soto Zoning Regulations. Should Permittee fail to comply with any term or provision thereof and shall such failure continue following notice from City to Permittee specifying the breach and actions to be taken to cure the same, then, at the direction of the City Administrator, Permittee will be notified that this Special Use Permit is revoked prior to its otherwise normal expiration and all uses permitted herein on the Property must immediately cease. Reinstatement following default may only be effected by action of the Governing Body. Wholly separate and apart from the specific conditions of the City's Zoning Regulations are the City's interest and duties to protect the public health, safety and welfare. Permittee agrees that this Ordinance shall not operate or be construed to impede or impair the lawful function of City government operation in this area.

Section 5. Effective Date. This ordinance shall take effect and be in force from and after its passage, approval and publication as provided by law, which will also be the effective date for purposes of the Special Use Permit herein granted.

PASSED AND APPROVED BY AT LEAST A 2/3 MAJORITY OF THE GOVERNING BODY THIS 17TH DAY OF SEPTEMBER, 2015.

(Seal)

Timothy J. Maniez, Mayor

ATTEST:

Lana R. McPherson, MMC, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

EXHIBIT A

LEGAL DESCRIPTION HARP'S FOOD STORE DE SOTO, KANSAS

Lot 3, except the west 50 feet and except the south 210 feet of the east 150 feet thereof, Block 1, Corridor 10 Commerce Park, a subdivision in the City of Desoto, Johnson County, Kansas, according to the recorded plat thereof,

Lot 4, except the south 210 feet of the west 35 feet thereof, Block 1, Corridor 10 Commerce Park, a subdivision in the City of Desoto, Johnson County, Kansas, according to the recorded plat thereof,

The west 155 feet of Lot 5, Block 1, Corridor 10 Commerce Park, a subdivision in the City of Desoto, Johnson County, Kansas.