

17.37.010, Created.

There is hereby created a special purpose zoning classification to be known as the downtown historic district retail overlay zone, which shall include all lots and parcels fronting on Railroad Avenue S.E. from the southerly margin of the right-of-way of Fir Street, at the northern property boundary of 7850 Railroad Ave S.E., at its intersection with Railroad Avenue to a line intersecting Railroad Avenue defined as the southerly property boundary of 8250 Railroad Avenue S.E., commonly known as the Town Pump extended, and, to all lots and parcels fronting Falls Avenue from its northernmost point at S.E. King Street to a line intersecting with Falls Avenue defined as the southerly property boundaries of the parcel addressed 8200 Railroad Ave S.E.

17.37.030, Special use regulations within downtown historic district overlay zone.

- A. Subject to the underlying use regulations of this title, and subject to the provisions of SMC 17.37.040, within the historic district overlay zone at least 90 percent of the storefronts on Railroad Avenue S.E. and Falls Avenue shall be occupied by retail uses, and no more than 10 percent of storefronts shall be occupied by nonretail uses. For purposes of this section, a “storefront” shall mean separately owned or leased ground floor premises with a separate entrance on Railroad Avenue S.E. or Falls Avenue. A building may have one or more storefronts. City-occupied buildings fronting on Railroad Avenue S.E. or Falls Avenue shall not be included within the definition of “storefront.”
- B. The director shall establish and maintain a list by address of all storefronts within the downtown historic district retail overlay zone and a determination of whether such storefront is occupied by a retail use. The list shall include a calculation of the percentage of storefronts occupied by retail uses as of the date of the list. The list shall be updated prior to the issuance of any business license for a business intending to locate in any storefront fronting on Railroad Avenue S.E. or Falls Avenue within the downtown historic district retail overlay zone. No business license shall be issued for any business proposing to locate in a ground floor storefront on Railroad Avenue S.E. or Falls Avenue within the downtown historic district retail overlay zone unless the director certifies that the issuance of such business license is in compliance with the requirements of subsection A of this section; provided, the renewal of business licenses for businesses in existence as of the effective date of the ordinance codified in this chapter shall not be prohibited by this section.
- C. Storefronts and second-story uses located outside the downtown historic district retail overlay zone shall be subject to the underlying zoning only and shall not be subject to the special use regulations of this chapter. (Ord. 1198 § 22 (Exh. D), 2017; Ord. 869 § 1, 2000).

17.37.040, Waiver of special use regulations.

- A) The owner or authorized agent of the owner of any premises subject to the special use regulations of SMC 17.37.030 may apply for a waiver of such regulations upon making a written application therefor describing the premises by address, the last retail use, the date such premises became vacant, the proposed nonretail use, and the date such proposed nonretail lease is proposed to commence. The application shall be supported by declaration signed under penalty of perjury setting forth the facts supporting the application. The grounds for such waiver shall be as follows:

- 1) Such premises are vacant;

- 47 2) Such owner or agent has made a good faith effort to lease the premises for a retail use for a period
48 greater than 365 days from the latter of the date of vacancy and the date of commencement of
49 efforts to lease the premises for a retail use;
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- 51 3) Such owner or agent has offered the premises for lease for a retail use at a rate no higher than the
52 rate for the proposed nonretail use and upon other terms and conditions at least as favorable, and
53 advertised the premise in the following manners for at least the majority of the period specified by
54 subsection A.2 of this section:
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- 56 i) At least one physical sign upon or within the building, with text legible from the street upon
57 which the qualifying storefront occurs; and
58 ii) Upon publicly accessible online commercial real estate listing services.
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- 60 4) Despite such good faith efforts, such owner or agent has not been able to lease the premises for a
61 retail use and such premises remain vacant; and
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- 63 5) Such owner or agent has not offered the premises to a potential nonretail user prior to the date of
64 application for the waiver.
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- 66 B) Such application and declaration shall be supported by copies of the following documentation:
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- 68 1) Copies of all published and nonpublished advertising or other solicitations offering the premises
69 for lease, including but not limited to newspaper advertisements, circulars or flyers, online listings,
70 photos of physical signage, and advertisements used by brokers or agents, with annotations as to
71 the date and place of publication;
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- 73 2) A list of potential retail users contacted or expressing interest in leasing the premises, and the reason
74 of each potential user for not leasing the premises, if known; and
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- 76 3) Any other document the owner or agent desires to have considered by the director.
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- 78 C) The planning commission shall review all requests for waivers under this section. The planning
79 commission shall review and evaluate a waiver request at a regularly scheduled meeting within 30 days
80 following receipt of a complete application for a waiver. The planning commission shall make a
81 decision on the waiver request by majority vote to either approve or deny the waiver; provided, the
82 application shall be allowed unless the planning commission affirmatively finds that one or more of the
83 grounds of subsection A of this section have not been met or the application or declaration is fraudulent
84 or not made in good faith. The director shall prepare a written notice of decision reflecting the decision
85 of the planning commission. The notice of decision shall be mailed to the applicant by certified mail,
86 return receipt requested, and by ordinary mail. The effective date of the decision shall be deemed to be
87 the date of mailing of the notice of decision.
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- 89 D) The decision on the waiver request may be appealed to the hearing examiner by filing a written notice
90 of appeal with the city clerk, setting forth the factual and legal basis of the appeal within 10 days of the
91 date of the decision.