

ORDINANCE NO. 13,905

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by repealing paragraph (b) of Section 134-1352, paragraph (b) of Section 134-1353 and paragraph (f) of subsection 4 of Section 134-64 thereof and enacting new paragraph (b) of Section 134-1352, paragraph (b) of Section 134-1353 and paragraph (f) of subsection 4 of Section 134-64, regarding the continuation of non-conforming uses.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, is hereby amended by repealing paragraph (b) of Section 134-1352, paragraph (b) of Section 134-1353 and paragraph (f) of subsection 4 of Section 134-64 thereof and enacting new paragraph (b) of Section 134-1352, paragraph (b) of Section 134-1353 and paragraph (f) of subsection 4 of Section 134-64, regarding the continuation of non-conforming uses, as follows:

**Sec. 134-1352. Use of land, use of structures and structures in any R district.**

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(b) *Nonconforming uses of structures.* If a lawful use of a structure or of a structure and land in combination exists at the effective date of the ordinance adopting or amending this chapter that would not be allowed in the district under the terms of this chapter, the use may be continued so long as it remains otherwise lawful, subject to the following:

(1) No existing structure devoted entirely or in part to a use not permitted by this chapter in the district in which it is located, except when required by law, shall be enlarged, extended, reconstructed, moved or structurally altered, unless the use is changed to a use permitted in the district in which such structure is located.

(2) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use on the effective date of the ordinance adopting or amending this

chapter. No such use shall be extended to occupy any land outside such building.

(3) If no structural alterations are made, a nonconforming use of a structure may be changed to another nonconforming use of a similar nature within the same or a more restricted classification . Whenever a nonconforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restrictive use.

(4) If a nonconforming use of a structure or structure and land in combination is abandoned, the

use of such  
shall  
thereafter  
conform to the  
uses permitted  
in the  
district in  
which it is  
located. A use  
shall be  
deemed  
abandoned if  
while such use  
has been  
discontinued  
the owner of  
the property  
makes any  
change to the  
property  
inconsistent  
with the  
resumption of  
such use.  
Changes  
inconsistent  
with the  
resumption of  
a use include,  
but are not  
limited to:  
placing the  
property to  
another use;  
or combining  
two or more  
dwelling units  
under one  
water, gas or  
electric  
meter;  
creating an  
opening  
between two  
dwelling  
units.

(5) If a nonconforming use of a structure or structure and land in combination is discontinued, i) for more than two years prior to January 1, 1992; ii) for more than one year between January 1, 1992, and February 1, 2001; or, iii) for more than one year for any reason whatsoever after February 1, 2001, the use of such shall thereafter conform to the uses permitted in the district in which it is located.

(6) If a nonconforming use of a structure or structure and land in combination which would not be permitted in the C-1 Neighborhood

Retail  
Commercial  
District is  
discontinued  
for more than  
six months and  
for less than  
one year for  
any reason  
whatsoever  
after February  
1, 2001, the  
use of such  
shall  
thereafter  
conform to the  
uses permitted  
in the C-1  
Neighborhood  
Retail  
Commercial  
District. If a  
nonconforming  
use of a  
structure or  
structure and  
land in  
combination  
which would  
not be  
permitted in  
the C-1  
Neighborhood  
Retail  
Commercial  
District is  
discontinued  
for more than  
one year for  
any reason  
whatsoever  
after February  
1, 2001, the  
use of such  
shall  
thereafter  
conform to the

uses permitted  
in the  
district in  
which it is  
located.

(7) Any  
structure  
devoted to a  
use made  
nonconforming  
by this  
chapter that  
is destroyed  
by any means  
to an extent  
of 60 percent  
or more of its  
replacement  
cost at the  
time of  
destruction,  
exclusive of  
the  
foundations,  
shall not be  
reconstructed  
and used as  
before such  
happening. If  
the structure  
be less than  
60 percent  
destroyed  
above the  
foundation, it  
may be  
reconstructed  
and used as  
before,  
provided it is  
done within  
six months of  
such happening  
and is built  
of like or  
similar

materials.  
Where  
nonconforming  
use status  
applies to a  
structure and  
land in  
combination,  
removal or  
destruction of  
the structure  
shall  
eliminate the  
nonconforming  
status of the  
land. This  
subsection  
does not apply  
to  
nonconforming  
structures  
within a R-HD  
residential  
historic  
district.

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**Sec. 134-1353. Use of land, use of  
structures and structures in any district  
other than R district.**

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(b) *Nonconforming uses  
of structures.* The



regulations governing nonconforming uses of structures in any R district as described in subsections 134-1352(b)(1) through (5) and (b)(7) shall also apply to this section with the following exception: Subject to subsection (d) of this section, any structure in any district other than an R district devoted to a use made nonconforming by this chapter may be structurally altered or enlarged in conformity with the lot area, lot coverage, frontage, yard, height, and parking requirements of the district in which located, provided such construction shall be limited to buildings on land owned of record by the owner of the land devoted to the nonconforming use prior to the effective date of the ordinance from which this section derives. Such structural alteration or enlargement shall not authorize the substitution of a nonconforming use that is less restrictive than the one to which the structure was devoted on the effective date of the ordinance from which this section derives.

**Sec. 134-64. Powers and duties.**

The board of adjustment shall have the power and duty to:

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(4) Permit the exceptions in this subsection to the district regulations set forth in this chapter, provided all exceptions shall by their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property; shall not impair an adequate supply of light and air to adjacent property; shall not unduly increase congestion in the public streets; shall not increase public danger of fire and safety; and shall not diminish or impair established property values in surrounding areas. However, nothing in this subsection shall be interpreted as authorizing the board to grant an exception to any separation requirement, such power being expressly denied the board. Any exception to a separation requirement granted for a structure for which a

building permit has not been issued shall be null and void. In granting any exception, the board may prescribe appropriate conditions and safeguards in conformity with this chapter. The board of adjustment may permit:

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f. Exceptions to the time period within which a use may be resumed after a temporary discontinuance of that use, where

1. The discontinuance of the use was due to unique circumstances not of the owner's own making.

2. The use to be authorized by the exception is



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Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

Preston Daniels, Mayor

Attest:

I, Donna Boetel-Baker, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 01-244), passed by the City Council of said City at a meeting held January 22, 2001, signed by the Mayor on January 22, 2001, and published as provided by law in the Business Record on February 5, 2001. Authorized by Publication Order No.1545.

Donna Boetel-Baker, MMC, City Clerk