

Date August 11, 2008

WHEREAS, the City Plan and Zoning Commission will review and make a recommendation on August 7, 2008 regarding City Council initiated amendments to Chapter 134 of the City Code (Zoning Ordinance) regarding non-conforming use provisions, Chapter 82 (Site Plan Ordinance) regarding penalties for parking violations of a Site Plan, and to Chapter 114 (Traffic & Vehicles Ordinance) regarding illegal off-street parking.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on August 25, 2008, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

**(Council Commission No. 08-501)**

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:



Michael F. Kelley  
Assistant City Attorney

(10-2008-5.04)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

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\_\_\_\_\_  
City Clerk

- An amendment to Chapter 134 of the City Code (Zoning) that states if a non-conforming use in any district other than a residential district ceases for a period of more than 6-months, for any reason, that such use shall thereafter conform to the uses permitted in the district which it is located. Under the existing code, the non-conforming use may cease for a period of up to one year and still maintain a legal non-conforming status.
- An amendment to Chapter 82 of the City Code (Site Plan regulations) that allows the penalty for parking in violation of an approved site plan to be enforced as a violation of the illegal off-street parking section of Chapter 114 of the City Code (Traffic & Vehicles). Under the current code, parking in violation of an approved site plan is only enforced via the general penalty section of the City Code (i.e. a municipal infraction via District Court).
- An amendment to Chapter 114 of the City Code (Traffic and Vehicles) that makes parking in violation of Chapter 82 (Site Plan Regulations) illegal and makes each violation subject to a \$40.00 fine.

## **II. ADDITIONAL APPLICABLE INFORMATION**

The Regulation and Ordinance Subcommittee of the Plan and Zoning Commission met on July 9 and July 23, 2008 to discuss the proposed ordinance changes. Representatives of the Iowa Independent Automobile Dealers Association (IIADA) and a local automobile financing entity were in attendance at both meetings. Those entities have forwarded the proposed ordinance to their members for review.

If a recommendation is made by the Plan and Zoning Commission on August 7, 2008 it is anticipated that on August 11, 2008 the City Council will take action to set a date of public hearing on the proposed ordinance for August 25, 2008. The moratorium on new or expanded vehicle display lots is scheduled to expire on August 26, 2008.

### **SUMMARY OF DISCUSSION**

Erik Lundy: Presented staff report and recommendation, asked Commissioner Heilman for his comments as the chair of R&O committee.

Bruce Heilman: Explained that these amendments would unify existing zoning enforcement for all legal non conforming uses.

Brian Millard: Asked how this would be enforced, whether it would be enforced by Neighborhood Inspection Division staff or Development Zoning staff.

Larry Hulse: Stated that he did not know, but depending on the nature thought that some aspects of the changes would be helpful for the Neighborhood Inspections Division. But that the bulk of the enforcement would be done by the Development Zoning Inspectors.

Bruce Heilman: Stated that R&O is still looking at the issue of what level of activity requires a site plan and expects to bring some new language for the commission's consideration in the near future.

### **CHAIRPERSON OPENED THE PUBLIC HEARING**

*The following individuals spoke in opposition:*

Tom Wong of Tom's Auto Sales, 205 NE 64<sup>th</sup>, Pleasant Hill: Stated that he was opposed to the levying of the fine and felt that the used car lot industry was being picked on.

JoAnne Corigliano: Stated that it is difficult for the City to be totally responsible for education of the rules and enforcement. She asked if his industry could help enforce the rules through peer pressure.

Darren Lewis of Automotive Finance Corporation, 287 Goldfinch Drive, Tiffany: Stated that he is opposed to the fine and believes that it is challenging for dealers to comply when the rules are applied differently for every lot.

Kent Sovern: Stated that there is inconsistency between lots because most lots in the City were established before the existing rules were in place and operate under grandfather rights.

Darren Lewis: Stated he believes that the grandfather rule should stay at 12 months and not be reduced to 6 months and wishes that warnings would be given instead of tickets being issued immediately.

Larry Hulse: Stated that this is an attempt to make the rules for the different lots more uniformed and that having so many lots operating under different rules due to grandfathering makes it hard for the community to know who is operating under what rules. He also stated that inspectors generally give a warning and in many cases multiple warnings before issuing a citation or ticket.

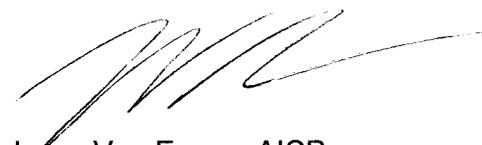
Gary Galinski, 3501 Aspen Drive, West Des Moines: Stated that he is opposed to reducing the grandfather time. He also indicated that auto sales business takes longer to set up than most businesses because of the extra licensing requirements.

#### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Fran Koontz: Motion to approve staff recommendation.

Motion passed 15-0

Respectfully submitted,



Jason Van Essen, AICP  
Senior City Planner

JMV:clw

cc: File

**EXHIBIT "A"**

CHAPTER 82. PLANNING  
ARTICLE V. SITE PLAN REVIEW

**Sec. 82-219. Penalties.**

- a. Appropriate actions and proceedings may be taken by law or in equity to prevent any violation of this article; to prevent unlawful construction; to recover damages; to restrain, correct, or abate a violation; and to prevent illegal occupancy of a building, structure or premises, and these remedies shall be in addition to the penalties described in section 1-15 of this Code.
- b. No person shall park a vehicle upon property subject to an approved site plan except within an area designated by that site plan to be used for parking or loading. The requirements of this subsection may also be enforced as a violation of subsection 114-361.02(c) of this Code.

CHAPTER 114. TRAFFIC AND VEHICLES  
ARTICLE VIII. STOPPING, STANDING AND PARKING

**Sec. 114-361.02. Illegal off-street parking.**

- (a) No person shall drive, stop, stand, or park a vehicle onto or upon privately owned property or an area developed as an off-street parking facility, without the consent of the owner, lessee or person in charge of the privately owned property or facility. A violation of this section shall place such vehicle in the status of an illegally parked vehicle and, upon complaint of the owner, lessee or person in charge of the privately owned property or facility, the vehicle may be dealt with pursuant to section 114-485.11 of this chapter.
- (b) No person shall park a vehicle in violation of the front yard parking provisions in subsection 134-1377(m) of this Code.
- (c) No person shall park a vehicle a vehicle in violation of the site plan parking provisions in subsection 82-219(b) of this Code.
- (d) A person who violates any provisions of this section shall pay a fine of \$40.00.

CHAPTER 134. ZONING  
DIVISION 4. NONCONFORMING USE AND STRUCTURES

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

- (a) *Nonconforming uses of land.* The regulations governing nonconforming uses of land in any R district as described in subsections 134-1352(a)(1), (2), and (3) shall also apply to this section.

- (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:~~ *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) Within the U-1 and FW districts, 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) Subject to subsection (d) of this section, any structure in any district other than an R, U-1 or FW 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.*
  - (3) 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.*
  - (4) 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.*
  - (5) 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; combining two or more dwelling units under one water, gas or electric meter; or creating an opening between two dwelling units.*
  - (6) 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 between February 1, 2001, and September 1, 2008; or for more than six months for any reason whatsoever after September 1, 2008, the use of such shall thereafter conform to the uses permitted in the district in which it is located.*

- (c) *Nonconforming structures.* The regulations governing nonconforming structures in any R district, as described in subsections 134-1352(c)(1), (d) and (e) shall also apply to this section.
- (d) *Business holding liquor license or beer or wine permit.* Any structure or portion thereof used by a business holding a liquor license or beer or wine permit which is nonconforming with the requirements of section 134-954 shall not be changed in any way which would alter the occupant capacity of the business premises, structurally altered or enlarged, and if damaged by any means to an extent of 60 percent or more of its value at the time of destruction, exclusive of land, shall not be reconstructed for use by a business holding a liquor license or beer or wine permit, without compliance with section 134-954.

**NOTE: The italicized text above was previously contained in Section 134-1352 and incorporated by reference in this section. The reference has been replaced by the actual text.**