

Date August 25, 2008

WHEREAS, on August 11, 2008, by Roll Call No. 08-1420, it was duly resolved by the City Council that the proposal to amend §82-219, §114-361.02 and §134-1353 of the City Code regarding the prohibition of parking in violation of an approved site plan and the allowed continuation of nonconforming uses, for the purpose of addressing the problem of businesses parking vehicles in required setbacks and other areas not designated for parking or vehicle display and the resumption of commercial and industrial uses that do not conform with the required setbacks and other requirements, be set down for hearing on August 25, 2008, at 5:00 p.m., in the Council Chambers at City Hall; and

WHEREAS, by said Roll Call No. 08-1420, the City Council referred the proposed amendments to the City Manager to recommend appropriate changes to the address issues of concern to the public and automobile dealership businesses; and,

WHEREAS, the City Manager has revised the proposed amendments to be as set forth in Exhibit "A" to address the identified issues of concern; and,

WHEREAS, due notice of the hearing was published in the Des Moines Register as provided by law on August 14, 2008; and

WHEREAS, in accordance with the notice, those interested in the proposed amendments, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that upon consideration of the facts, statements of interested persons and arguments of counsel, the objections to said proposed amendments to the Zoning Ordinance be and the same are hereby overruled, and the hearing closed.

MOVED by _____ to adopt and approve the proposed amendment, subject to final passage of the enacting ordinance.

(continued)

★ Roll Call Number

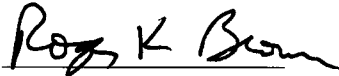
Agenda Item Number

42A

Date August 25, 2008

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FORM APPROVED:



Roger K. Brown
Assistant City Attorney

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

MOTION CARRIED

APPROVED

.....
Mayor

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.

City Clerk

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, loading or vehicle display, except temporary parking of vehicles shall be permitted with the consent of the owner or tenant of the property upon areas designated on the approved site plan as parking areas, paved storage areas, or drive aisles not required for vehicular access to the required public parking, for the following activities:
1. As necessary for the repair and maintenance of a parking lot or vehicle display lot, including but not limited to snow removal and resurfacing.
 2. During loading, unloading and rotation of vehicles at a vehicle display lot.
 3. Temporary parking by persons not under the direction or control of the business, provided that such a vehicle is moved to a location in conformance with the approved site plan within one hour after the vehicle is placed under the control of the business.
- The requirements of this subsection may also be enforced as a violation of subsection 114-361.02(c) of this Code.

NOTE: The highlighted text above was added in response to the request by the City Council on August 11, 2008, by Roll Call No. 08-1420, to address the concerns of the public and automobile dealerships.

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 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.