

Date February 8, 2021

**RESOLUTION SCHEDULING HEARING ON PROPOSED AMENDMENT TO ZONING ORDINANCE**

**WHEREAS**, on April 25, 2016, by Roll Call No. 16-0717, the City Council adopted the PlanDSM: Creating Our Tomorrow Plan as the comprehensive plan for the City of Des Moines; and

**WHEREAS**, on October 16, 2019, by Roll Call No. 19-1683, the City Council approved Ordinance No. 15,816 adopting the Zoning Ordinance, which repealed and replaced previous Chapter 134 of the Des Moines Municipal Code and Article 5 of which repealed and replaced the City's Wireless Telecommunications Facility Policy adopted on April 8, 2019 by Roll Call No. 19-0580, and certain ordinances amending the City's Zoning Ordinance have been approved by City Council thereafter; and

**WHEREAS**, the City Manager has directed staff to draft a further amendment to Sections 134-6.5.2, 134-6.6.2, and 134-7.2.3 of the Zoning Ordinance, which amendment is intended to allow for expansion or extension of legal non-conforming residential uses within one-household and two-household residential structures by addition thereto, and the construction of detached private garages and outbuildings on lots containing such residential structures, to address the needs of existing residential uses in Des Moines including the health, safety, morals, and general welfare of the community, and the preservation and improvement of the peace, safety, health, welfare, comfort, and convenience of Des Moines residents; and

**WHEREAS**, specifically, the proposed amendment to the Zoning Ordinance provides:

- Legal non-conforming residential uses within an one-household or two-household residential structure may be expanded or extended to occupy land outside such structure by addition thereto pursuant to a Type 1 zoning exception, reviewed administratively, if such expansion or extension does not exceed thirty percent (30%) of the assessed value of the structure at the time of permit application;
- Legal non-conforming residential uses within an one-household or two-household residential structure may be expanded or extended to occupy land outside such structure by addition thereto pursuant to a Type 2 zoning exception, reviewed by the City's Zoning Board of Adjustment, if such expansion or extension is between thirty-one to fifty percent (31-50%) of the assessed value of the structure at the time of permit application;
- To determine eligibility of a Type 1 or Type 2 zoning exception, the valuation of any above-described expansion or extension shall be measured cumulatively from the effective date stated in the Zoning Ordinance, using all building permits issued by the city's permit and development center, county assessor's records, insurance records if no assessor's records are available, and other documentation determined necessary by the community development director, related solely to the principal structure being expanded or extended; and
- Outbuildings and detached private garages may be constructed on lots containing legal nonconforming residential uses within an one-household or two-household structure, insofar as said accessory structures comply with all applicable sections of the Municipal Code and specifically Sections 134-3.9 and 135-2.22.2.C; and

**WHEREAS**, the City Plan and Zoning Commission is expected to consider and hold public hearing on said amendment to the Zoning Ordinance at its Commission meeting scheduled for February 18, 2021, and will submit its final report and recommendation to the City Council thereafter for receipt by the City Council

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prior to Council holding public hearing and taking action on the proposed amendment to the Zoning Ordinance; and

**WHEREAS**, the proposed amendment to the Zoning Ordinance is on file and available to the public for viewing in the office of the City Clerk.

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

1. The proposed amendment to the Zoning Ordinance, in substantially the form on file in the office of the City Clerk, is hereby referred to the Development Services Director for consideration by the City Plan and Zoning Commission and report to be returned to City Council prior to public hearing on said amendment.
2. The City Council shall consider the proposed amendment to the Zoning Ordinance at a public hearing to be held at 5:00 p.m. on February 22, 2021, by electronic means to encourage and maintain social distancing to curb the spread of COVID19 in the community, without public access to the meeting location, at which time the City Council will hear both those who oppose and those who favor the proposed amendment.
3. That the City Clerk is hereby authorized and directed to cause notice of said hearing 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. The City Clerk is instructed to provide this notice including information about participation in the electronic meeting as indicated above.

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

FORM APPROVED:

/s/ Glenna K. Frank  
 Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED APPROVED

**CERTIFICATE**

I, P. KAY CMELIK, 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.

\_\_\_\_\_  
 Mayor

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

**Additional Revisions – February 2021 Amendment**

**Chapter 134 ZONING**

**Sec. 134-6.5.2 AUTHORIZED TYPE 1 ZONING EXCEPTIONS**

Unless otherwise allowed by this ordinance, only the following may be approved as Type 1 zoning exceptions:

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- 8. Exceptions to allow two to six signs on a temporary basis in all districts other than A, N, NX, and NM districts; ~~and~~
- 9. Exceptions to allow a nonconforming residential use within an one-household or two-household residential structure to expand or extend and occupy land outside said structure by addition thereto, provided that the expansion or extension has an estimated cost for building permit purposes that does not exceed thirty percent (30%) of the assessed value of the existing residential structure at the time of permit request. For purposes of this Type 1 zoning exception, the valuation of expansions and extensions shall be measured cumulatively from the effective date of this chapter, using all building permits issued by the city’s permit and development center, county assessor’s records, insurance records if no assessor’s records are available, and other documentation determined necessary by the community development director, related solely to the principal structure being expanded or extended; and
- 109. Other exceptions expressly provided in this chapter.

**Sec. 134-6.6.2 AUTHORIZED TYPE 2 ZONING EXCEPTIONS**

Unless otherwise allowed by this ordinance, only the following may be approved as Type 2 zoning exceptions:

- 1. Exceptions to any numerical regulation established in this chapter, when the exception does not exceed 50% of the applicable numerical regulation, other than separation distance requirements, ~~and other than use requirements set forth in section 134-3.8 of this chapter, and estimated cost percentages related to exceptions to allow nonconforming residential uses within an one-household or two-household residential structure to expand or extend and occupy land outside said structure by addition thereto.~~
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- 9. Exceptions to allow a nonconforming residential use within an one-household or two-household residential structure to expand or extend and occupy land outside said structure by addition thereto, provided that the expansion or extension has an estimated cost for building permit purposes that is between thirty-one and fifty percent (31-50%) of the assessed value of the existing residential structure at the time of permit request. For purposes of this Type 2 zoning exception, the valuation of expansions and extensions shall be measured cumulatively from the effective date of this chapter, using all building permits issued by the city’s permit and development center, county assessor’s records, insurance records if no assessor’s records are available, and other documentation determined necessary by the community development director, related solely to the principal structure being expanded or extended.

98. Other exceptions expressly provided in this chapter.

**Sec. 134-7.2.3 EXPANSION**

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A. Unless otherwise expressly stated, nonconforming uses may not be expanded or extended to occupy a greater area than was occupied at the time the use became nonconforming unless the expansion reduces or eliminates the nonconformity. A nonconforming use of a portion of a building may be expanded or extended into the remaining portions of the building if the community development director determines that the area of the building in which the expansion is proposed was manifestly arranged and designed for the use. No such use shall be extended to occupy any land outside any such structure unless otherwise provided in subsections 134-7.2.3.B and 134-7.2.3.C of this chapter.

B. A nonconforming residential use within an one-household or two-household residential structure may be expanded or extended to occupy land outside such structure by addition thereto pursuant to a Type 1 or Type 2 zoning exception in accordance with Sections 134-6.5 and 134-6.6, respectively, of this chapter.

C. An outbuilding or detached private garage, as described in Section 135-2.22.2.C of this code, may be constructed on a lot containing a nonconforming residential use within an one-household or two-household structure, if such accessory structure complies with all applicable sections of this code, including Section 134-3.9 of this chapter and Section 135-2.22.2.C of this code. Any such outbuilding or detached private garage shall be treated as if it were located on a lot zoned Neighborhood (N) or Neighborhood Mix (NX) for purposes of determining lot coverage limits pursuant to Section 135-2.22.2.C.4 of this code.