

COUNCIL ACTION FORM

SUBJECT: TEXT AMENDMENTS FOR UPDATING NONCONFORMING USE AND NONCONFORMING STRUCTURE STANDARDS

BACKGROUND:

City Council has directed staff to update and clarify the standards related to nonconformities as a result of recent decision by the Iowa Court of Appeals to limit the interpretation of restrictions on intensifying a nonconforming use to specifically residential density and commercial floor area. The proposed amendments address three primary issues within Article III of the Zoning Ordinance for expansion of a nonconforming use, changes to nonconforming uses, and defining remodeling for nonconforming structures. **City Council reviewed draft standards for these issues at its November 13, 2018 meeting and directed staff to prepare an ordinance and publish a public hearing notice for the proposed ordinance.** The draft ordinance is attached to this report.

The first proposed changes address specific limitations on increasing the intensity of a nonconforming use. The new language creates a specified list of what is consider an increase in intensity of use, distinguished between commercial and residential uses. The nonconformity standards are intended to address both uses within a building and outdoors. **The proposed language clarifies that an increase in intensity can apply to any condition on a property, not just the indoor use of a building. It also clarifies that an expansion of up to 125% of the area is permissible for some uses with a special use permit.**

The second area of change concerns the change of use or abandonment of a nonconforming use. The proposed amendment clarifies that if a property owner changes the use and discontinues the nonconforming use that they may not reestablish the prior nonconforming use. **Additionally, the exception for calculating the period of abandonment related to calamities is clarified to match the 18-month period defined for nonconforming structures.**

The third issue addressed with the proposed amendments concerns remodeling of nonconforming structures. Nonconforming structures are addressed independent of use. Individuals are allowed to maintain and in some instances expand nonconforming structures. The current ambiguity relates to the term remodeling, and to what degree can a building be altered before there is an expectation of conformance to the current standards. Remolding is an undefined term with the ordinance. Staff proposes a new defined term for remodeling to address when a project is more of a reconstruction of a building than a remodel. **The standard is twofold in allowing for either retention of 50% of the exterior walls or the roof to classify a project as a remodel.** For example, a whole front façade of building can be removed and replaced with a new façade if either the roof is retained or

the majority of the walls are retained. The proposed changes do not affect regular maintenance of the building, such as residing.

ALTERNATIVES:

1. The City Council can approve on first reading the attached ordinance to amend the Zoning Ordinance regarding Nonconformities.
2. The City Council can recommend modified language for a zoning text amendment.
3. The City Council can decline to proceed with amending the zoning text amendment.

CITY MANGER'S RECOMMENDED ACTION:

The City's current nonconforming language is intended to balance managing nonconformities with property owner's interests to continue the use of their property. Due to the ambiguity of current terminology of enlargement and increase in intensity it is difficult to administer the City's expectations regarding a wide range of nonconformities, including commercial and residential uses as well as indoor and outdoor activities. **Staff's proposed changes are designed to more clearly articulate the scope of the limitations regarding nonconforming uses. The changes preserve a small allowance to enlarge floor area of a use that currently exists in the ordinance. The additional changes also help to clarify certain allowances for changes of use, abandonment, and remodeling. The proposed ordinance addresses all these issues with greater clarity than the current ordinance language.**

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1.

ORDINANCE NO.

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING SECTION 29.307 (2)(a)(i)(a),(b), (c)(ii)(iii)(iv)(v),(b),(c)(i)(ii)(a),(b),(c),(d)(iii)(vi) AND ENACTING A NEW SECTION 29.307(2)(a)(i)(ii)(iii)(iv)(v)(vi),(b),(c),(d),(e),(f),(g)(i)(ii) (a)(b)(c),(d)(iii)(vi),(3)(a)(i) THEREOF, FOR THE PURPOSE OF UPDATING NONCONFORMING USE AND NONCONFORMING STRUCTURE STANDARDS REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended as follows:

“Section 29.307. NONCONFORMITIES.

...

(2) Nonconforming Uses.

...

(a) Movement, Alteration and Enlargement. No increase of intensity of use is permitted except in conjunction with the allowances of subsection b and c. Increase of intensity means any of the following:

- i. increase to the amount of floor area for a non-Household Living use,
- ii. an increase in the horizontal or vertical dimensions of a non-Household Living use (both indoor or outdoor),
- iii. a change in operation of a non-Household Living use that requires corresponding improvements to the site,
- iv. an increase in the amount of building coverage for a manufactured home, single or two-family dwelling as Household Living,
- v. an increase in the number of apartment dwelling units, SRO, and other self-contained dwelling units as Household Living, and
- vi. an increase in the number of bedrooms for an apartment dwelling unit, SRO, and other self-contained dwelling units as Household Living.

(b) The building area, floor area, or dimensions of a nonconforming use may not be enlarged, expanded or extended to occupy parts of another structure or portions of a lot that it did not occupy on the effective date of this Ordinance, unless the enlargement, expansion or extension complies with all requirements for the zone, does not create an additional nonconformity, and is approved for a Special Use Permit by the Zoning Board of Adjustment, pursuant to the procedures of Section 29.1503, excluding 29.1503(4)(b)(vii) of the Review Criteria General Standards, and subject to subsection c.

(c) Any building or structure containing a nonconforming use may be enlarged up to 125% of the floor area existing on the effective date of this ordinance, provided that the expanded building or structure complies with all development standards of the zone in which it is located. An increase in intensity of operations, dimensions, dwelling units, or apartment bedrooms shall not be specially permitted.

The enlargement of a nonconforming use that has the effect of making a structure nonconforming, shall not be specially permitted pursuant to Section 29.1503, but rather shall be construed as a request for a variance, subject to the procedures of Section 29.1504.

(d) Exterior or Interior Remodeling or Improvements to Structure. Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be permitted, provided

that any proposed enlargement, expansion or extension shall be subject to the provisions set forth in the above paragraph. An increase in intensity is not permitted in conjunction with remodeling or other improvements to the structure.

(e) Relocation of Structure. A structure containing a nonconforming use shall not be moved unless the use and structure will comply with all of the regulations that apply in the new location. The Zoning Board of Adjustment may authorize a structure containing a nonconforming use to be moved to another location on the same lot, provided that they determine that such a move will not have the effect of increasing the degree of nonconformity.

(f) Change of a Nonconforming Use. Except as provided in this Section, a nonconforming use may be changed only to a use that conforms to the Ordinance. Once changed to a conforming use, no use may revert to, or be re-established as a nonconforming use.

(g) Abandonment.

(i) Effect of Abandonment. Once abandoned, a nonconforming use shall not be reestablished or resumed. Any subsequent use or occupancy of the structure or lot must conform with the regulations of the district in which it is located.

(ii) Evidence of Abandonment. A nonconforming use shall be presumed abandoned when any of the following has occurred:

a. The owner has in writing or by public statement indicated intent to abandon the use;

b. The building or structure has been removed through the applicable procedures for the condemnation of unsafe structures;

c. The owner has physically changed the building or structure or its permanent equipment in such a way as to clearly indicate a change in use or activity to something other than the nonconforming use; or

d. The use has been discontinued, vacant or inactive for a continuous period of at least one year.

(iii) Notice. Upon the occurrence of any of the events described in Section 3(b) above, the Zoning Enforcement Officer shall document such event and shall issue a notice to the property owner by certified mail, return receipt requested, stating that the property owner's intent to abandon the Nonconforming Use is presumed, and that the Nonconforming Use will be terminated unless the property owner submits an Answer within 30 days of the date the notice was issued. However, no notice of abandonment is required when a property owner has initiated a change of use or received approvals from the City for changes to use of the property or property improvements.

...

(vi) Calculation of Period of Abandonment. Any period of discontinuance or cessation of use caused by government actions, fire or natural calamities, and without any contributing cause by the owner of the nonconforming use, shall not be considered in calculating the length of discontinuance pursuant to this Section for up to 18 months from the date of the event.

(3) **Nonconforming Structures.**

(a) Maintenance and Repair. Maintenance, remodeling and repair of a nonconforming structure shall be permitted without a variance or a Special Use Permit, provided that such maintenance, remodeling or repair does not increase the degree of nonconformity.

(i) Remodeling. An alteration to a nonconforming structure is classified as remodeling if, either the majority of the exterior walls or the roof is maintained through-out construction. In the event only an element of the structure (e.g. one wall) is non-conforming the remodeling of that feature must maintain 50% or more of its structural support and wall assembly to be considered remodeling and not rebuilding of the structure. Nothing within this definition is intended to restrict the adding or changing of

window and door openings or changes to exterior siding and roof materials in relation to the percentage limitations.”

Section Two. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Three. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this _____ day of _____, _____.

Diane R. Voss, City Clerk

John A. Haila, Mayor