

## CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

**Meeting Date:** May 10, 2021

**ITEM:** Ordinance Amendment, Amend Title 9 (Zoning), Chapter 3 (General Zoning Provisions) to modify regulations pertaining to the use of legal non-conforming buildings or structures - City Initiated – AO-005143-2021

### **RESOLUTION: Approval of Ordinance Amendment**

**Background:** Development Services Staff, in cooperation with the City's Legal Department is initiating an amendment to the Title 9: Zoning, Chapter 3: General Zoning Provisions, Section 4: Non-Conforming Buildings, Structures, Uses, Uses Of Land Or Uses Of Buildings Or Structures to modify regulations pertaining to the use of existing legal non-conforming buildings as currently regulated within City Code. Specifically, the amendment will provide an option to allow uses not otherwise permitted under the zoning code to replace an existing non-conforming use if the new use is of the same intensity or is less intense and would not adversely impact surrounding properties.

### **Staff Review & Comment:**

- ***Ordinance Amendment Intent:*** Title 9, Chapter 3 recognizes five basic categories of nonconformity, one of which is the Nonconforming Use of Structures. This category involves the use of buildings or land and buildings that would not be permitted under current regulations, but which were established before the regulations went into effect. The proposed code amendment will provide potential options for the reuse of existing buildings or structures that currently contain a legal nonconforming use by expanding the types of acceptable replacement uses.
- ***Background of Proposed Amendment:*** This code amendment comes in response to a long-standing grandfathered legal nonconforming veterinarian use within the Single Family Residential (RS-10) Zoning District. The veterinarian use was legally established when the property was located within the county but became a legal nonconforming use upon annexation to West Des Moines. Approximately nine months ago the veterinarian clinic relocated, and the owners of the property had difficulty finding a user for the building that was allowed by the zoning code. The existing Residential Single-Family zoning code allows limited uses such as administrative offices for social services and various government agencies but does not allow medical, insurance or other more general types of office uses. Because the City uses the more specific Standard Industrial Classification (SIC) to classify uses rather than a more general approach of simply stating "office", the more specific SIC classification restricts the allowable uses to just those uses that come under the same SIC number.
- ***Development & Planning Subcommittee:*** The property owners have had interest from a chiropractor wanting to occupy the building, however, a medical office is not an allowed use in the RS-10 zoning district. In an effort to accommodate the property owners, on November 2, 2020 Staff discussed with the Subcommittee the possibility of changing city code to permit certain types of office uses in single family districts across the City. While the Subcommittee members were comfortable with an office use operating within this site and believed that a chiropractic clinic would be a good fit, they were concerned that

permitting office uses in all residential districts of the City would not be compatible within those districts.

On April 5, 2021, the Subcommittee was provided additional information, including information regarding current Iowa caselaw involving legal nonconforming property. The City Attorney explained that the Iowa Supreme Court has held that an owner of a non-conforming property has a vested right in the continued use of the property if the change from the original use can be shown to have no additional adverse impact on the surrounding area. Factors to consider in making this determination include no or only a negligible increase in vehicular traffic, no change in the general hours of operation, no increased demand on public services, no known increase in the impact of noise, odor or light on adjacent developed properties, and no enlargement, expansion or material change in the building or structure itself. The proposed code amendment would allow the determination of adverse impacts to be made by the Director of Development Services, with the applicant maintaining a right of appeal to the Board of Adjustment. The Subcommittee indicated support to amend the zoning code to allow the continuation of non-conforming uses in residential areas which meet the impact criteria.

**Outstanding Issues:** There are no outstanding issues.

Plan and Zoning Commission Action:

Date:

Vote:

Recommendation:

City Council First Reading:

Date:

Vote:

**Recommendation:** Approve the Ordinance Amendment to City Code.

**Lead Staff Member: Lynne Twedt**

**Approval Meeting Dates:**

Plan and Zoning Commission	May 10, 2021
City Council: First Reading	
City Council: Second Reading	
City Council: Third Reading	

**Staff Report Reviews:**

Plan & Zoning Commission	<input checked="" type="checkbox"/> Development Coordinator (or) <input type="checkbox"/> Director	<input checked="" type="checkbox"/> Legal Department
City Council	<input type="checkbox"/> Director <input type="checkbox"/> Appropriations/Finance	<input type="checkbox"/> Legal Department <input type="checkbox"/> Agenda Acceptance

**Publications (if applicable)**

Published In:	Des Moines Register Community Section
Date(s) Published	4/30/21

**Council Subcommittee Review (if applicable)**

Subcommittee	Development & Planning		
Date Reviewed	11/2/2020 & 4/5/21		
Recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Split

**A RESOLUTION OF THE PLAN AND ZONING COMMISSION  
NO. PZC-21-027**

**WHEREAS**, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, staff requests approval of an Ordinance Amendment to Title 9: Zoning, Chapter 3: General Zoning Provisions, Section 4: Non-Conforming Buildings, Structures, Uses, Uses Of Land Or Uses Of Buildings Or Structures as provided in the Zoning Ordinance included within the staff report to modify regulations pertaining to use of existing legal non-conforming buildings as currently regulated within City Code.

**WHEREAS**, the Ordinance Amendment request complies with the applicable provisions of Iowa Code Chapter 414, the Comprehensive Plan and City Code.

**NOW THEREFORE**, the Plan and Zoning Commission of the City of West Des Moines recommends the City Council approve the Ordinance Amendment (AO-005143-2021).

**PASSED AND ADOPTED** on May 10, 2021.

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Erica Andersen, Chair  
Plan and Zoning Commission

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on May 10, 2021, by the following vote:

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

ATTEST:

\_\_\_\_\_  
Recording Secretary

Prepared by: L. Twedt, City of West Des Moines, Development Services Dept., P.O. Box 65320,  
West Des Moines, IA 50265-3620, 515-222-3620

When Recorded Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, IA 50265-0320

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## ORDINANCE NO.

**AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2020, TITLE 9, "ZONING", CHAPTER 3, "GENERAL ZONING PROVISIONS", SECTION 4, "NONCONFORMING BUILDINGS, STRUCTURES, USES, USES OF LAND OR USES OF BUILDINGS OR STRUCTURES"**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:**

**Section 1. Amendment.** Title 9 (Zoning), Chapter 3 (General Zoning Provisions), Section 4 (Non-Conforming Buildings, Structures, Uses, Uses of Land or Uses of Buildings or Structures) is hereby amended by adding the bold italicized text and deleting the highlighted strikethrough text:

C. Provisions:

3. Nonconforming Use of a Building or Structure:

- d. The non-conforming use of a building or structure may be changed to a use of the same classification, a less intense use of the same classification, ***a use of a different classification which is of the same or lesser intensity***, or to a conforming use for the district in which the building or structure is located. Where a nonconforming use of a building or structure is changed thusly, it shall not thereafter be changed to ***another non-conforming use of a more intensive use intense nature*** in that classification ***or in any other classification*** ~~or to any other nonconforming use for the district in which the building or structure is located. For these~~ ***A requests to change a nonconforming use to a less intense use of the same or lesser intensity within of the same classification, or to a use of the same or lesser intensity within a different classification will be evaluated by the Director of Community Development Services will determine the appropriateness of the change and will be allowed if there is no or only a negligible increase in vehicular traffic, no change in the general hours of operation, no increased demand on public services, no known increase in the impact of noise, odor or light on adjacent developed properties, and no enlargement, expansion or material change in the building or structure itself. A material deviation of one or more of these factors as determined by the Director of Development Services will prohibit a non-conforming change in use.***

**Section 2. Repealer.** All ordinances of parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 3. Savings Clause.** If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

**Section 4. Violations and Penalties.** Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in Title 1, Chapter 4, Section 1 of the City Code of the City of West Des Moines, Iowa.

**Section 5. Other Remedies.** In addition to the provisions set out in Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

**Section 6. Effective Date.** This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

**PASSED AND APPROVED** by the City Council on TBD.

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Steven K. Gaer, Mayor

Attest:

\_\_\_\_\_  
Ryan Jacobson, City Clerk

The foregoing Ordinance No. \_\_\_\_\_ was adopted by the Council for the City of West Des Moines, Iowa, on \_\_\_\_\_, 2021, and published in the Des Moines Register on \_\_\_\_\_, 2021.