

ORDINANCE NO. 6434

AN ORDINANCE TO AMEND CHAPTER 15.26 “NONCONFORMITIES” OF THE 2015 MUNICIPAL CODE (ZONING ORDINANCE) BY AMENDING SECTION 15.26.030 “NONCONFORMING USES.”

**BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

SECTION 1. That Chapter 15.26 “Nonconformities” of the 2015 Municipal Code (Zoning Ordinance) is hereby amended by amending Section 15.26.030 “Nonconforming Uses” to change the timeframe for Abandonment of Nonconforming Use stated in Section 15.26.030(B) to read as follows:

15.26.030 Nonconforming Uses

Any legal nonconforming use existing on the effective date of the ordinance codified in this chapter may continue subject to the limitations of this section.

- A. Enlargement of Nonconforming Use. No nonconforming use shall be extended or enlarged to occupy a greater area of land or structure. No additional structure not conforming to the requirements of this title shall be erected in connection with a legal nonconforming use.
- B. Abandonment of Nonconforming Use. If any nonconforming use ceases for a continuous period of more than twelve months, any subsequent use shall conform to the regulations of this title.
- C. Relocation of Nonconforming Use. No nonconforming use shall be moved in whole or in part to any other location, unless the nonconforming use meets the requirements of this title.
- D. Change of Use. A legal nonconforming use may be changed only as allowed in CBMC 15.02.
- E. Allowance for Repairs. If a structure occupied by a nonconforming use becomes unsafe for use and is declared by an authorized official to be unsafe for use, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of this title. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by an authorized official. When a structure containing a nonconforming use is damaged to an extent of fifty (50) percent or less of the replacement cost, the structure shall be allowed to continue if actual construction to repair it is commenced within six months of the date the damage was incurred, and the work is carried on diligently to completion within one year of this commencement.
- F. For purposes of this chapter, the addition of an outdoor area of less than one hundred fifty (150) square feet for purposes of adding an outdoor dining or open air tavern area to a pre-existing liquor license establishment shall not be deemed an enlargement of a pre-existing use.

(Ord. No. 6086, § 1, 6-28-2010)

Editor's note— Ord. No. 6086, § 1, adopted June 28, 2010, repealed the former section and enacted a new section as set out herein. The former section pertained to similar subject matter and derived from Ord. No. 5315, § 4, 1997.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

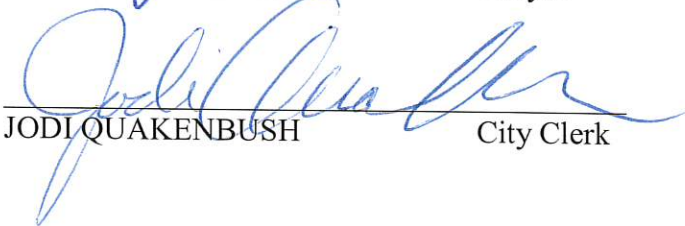
SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND
APPROVED

December 14, 2020.



MATTHEW J. WALSH Mayor

Attest: 

JODI QUAKENBUSH City Clerk

First Consideration: 11-23-20
Second Consideration: 12-14-20
Public Hearing: 12-14-20
Third Consideration: Waived

Proof Of Publication

State of Iowa

Pottawattamie County

NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN:

A public hearing is to be held by the City Council of the City of Council Bluffs, Iowa, on the 14th day of December, 2020 at 7:00 p.m. in the City Council Chambers, 2nd Floor of City Hall, 209 Pearl Street, Council Bluffs, Iowa at which time and place all persons interested in said matter will be given an opportunity to be heard.

The hearing is in regards to the City's intent to amend Section 15.26.030(b), Abandonment of Nonconforming Use, of the Municipal Code (Zoning Ordinance) to allow a nonconforming use to cease operating for a continuous period of twelve (12) months before the subsequent use shall be required to conform to the use regulations of Title 15: Zoning.

Jodi Quakenbush, City Clerk
2020(12)6-1 Sunday

I, Tom Schmitt, on my oath do solemnly that I am Publisher of the COUNCIL BLUFFS DAILY NONPAREIL, a newspaper issued DAILY and printed in said county, COUNCIL BLUFFS, IOWA.

The attached notice was published in said newspaper 1 consecutive time(s) as follows:

The First publication thereof began on the 06th day of December, 2020.

Signed in my presence by the said Tom Schmitt and by her sworn to before me this 6th day of December, A.D. 2020.

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Jodi Quakenbush, City Clerk
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Tom Schmitt
Daily Nonpareil Publisher


Jessica Boucher
Notary Public

Filed this 6th day of December, A.D. 2020.

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Council Communication

Department: City Clerk
Case/Project No.: ZT-20-005
Submitted by: Haley P. Weber, Planner

Ordinance 6434
ITEM 4.B.

Council Action: 12/14/2020

Description

Ordinance to amend Chapter 15.26 "Nonconformities" of the Zoning Ordinance by amending Section 15.26.030 "Nonconforming Uses." ZT-20-005

Background/Discussion

See attached staff report.

Recommendation

ATTACHMENTS:

Description	Type	Upload Date
Case #ZT-20-005 Staff Report	Other	11/13/2020
Attachment A - Proposed Section 15.26.030	Other	11/13/2020
Attachment B - Top Ten Iowa Cities - Nonconforming Uses	Other	11/13/2020
Public Hearing Notice	Other	11/13/2020
Ordinance 6434	Ordinance	11/18/2020

City Council Communication

Department: Community Development Cases #ZT-20-005 Applicant: Council Bluffs Community Development Department	Ordinance No.	1 st Consideration: 11/23/2020 2 nd Consideration: 12/14/2020 3 rd Consideration: Request to be waived Planning Commission: 11/10/2020
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Subject/Title

Public hearing on the request of the Council Bluffs Community Development Department to amend Section 15.26.030(b), Abandonment of Nonconforming Use, of the Municipal Code (Zoning Ordinance) to allow a nonconforming use to cease for a continuous period of twelve (12) months before the subsequent use shall be required to conform to the use regulations of Title 15: Zoning.

Background

The Community Development Department is requesting to amend Section 15.26.030(b), Abandonment of Nonconforming Use, of the Municipal Code (Zoning Ordinance) to allow a nonconforming use to cease operating for a continuous period of twelve (12) months before the subsequent use shall be required to conform to the use regulations of Title 15: Zoning. The proposed text amendment is included with this report as Attachment 'A'.

The request to amend the above mentioned section of code arose from a discussion regarding the rezoning, Case #ZC-20-010, considered by City Council on September 28, 2020. Case #ZC-20-010 involved rezoning properties from I-1/Light Industrial to C-2/Commercial District in the West Broadway Corridor, which subsequently caused a number of businesses in the West Broadway Corridor to become legally nonconforming. At this meeting, it was discussed that increasing the grace period for nonconforming uses from six (6) to twelve (12) months would be a reasonable adjustment as it would allow business owners sufficient time to sell their property and/or business before having to come into compliance with current allowed uses.

Additionally, in response to direction given by City Council to consider extending the existing six (6) month grace period for nonconforming uses, Community Development Department staff conducted research on the top ten largest cities in Iowa, which include: Des Moines, Cedar Rapids, Davenport, Sioux City, Iowa City, Waterloo, Council Bluffs, Ames, West Des Moines, and Dubuque regarding the grace period given to nonconforming uses, see Attachment 'B'. Seven of the top ten largest cities in Iowa allow a nonconforming use a twelve (12) month grace period before the subsequent use would be required to conform to current use standards. Ames and Des Moines have no grace period, requiring that nonconforming uses cease immediately upon vacancy. Council Bluffs was the only city among the top ten to have a six (6) month grace period.

The proposed text amendment is an effort to remain consistent among larger Iowa cities and provide business owners a sufficient and reasonable opportunity to legally continue to operate nonconforming uses where applicable.

Comments

All City departments and local utility providers received a copy of the proposed text amendment. The following comments were received regarding proposed amendment to Section 15.26.030(b), Abandonment of Nonconforming Uses:

- The Council Bluffs Public Works Department stated that they have no comments.
- The Council Bluffs Fire Department stated that they have no comments.
- Council Bluffs Water Works stated that they have no comments.

Recommendation

The Community Development Department recommends approval to amend Section 15.26.030(b), Abandonment of Nonconforming Use, of the Municipal Code (Zoning Ordinance) to allow a nonconforming use to cease for a continuous period of twelve (12) months before the subsequent use shall be required to conform to the use regulations of Title 15: Zoning.

Public Hearing

Staff speaker for the request:

1. Haley P. Weber, Planner, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503

Speakers in favor: None

Speakers against: None

Planning Commission Recommendation

The Planning Commission recommended approval to amend Section 15.26.030(b), Abandonment of Nonconforming Use, of the Municipal Code (Zoning) to allow a nonconforming use to cease for a continuous period of twelve (12) months before the subsequent use shall be required to conform to the use regulations of Title 15: Zoning.

VOTE: AYE - Bass, Danielsen, Halm, Haner, Holm, Rater, Rew, Scott, Stroebele, and VanHouten
NAY - None ABSTAIN - None ABSENT - Hutcheson VACANT - None Motion: Carried

Attachment(s)

Attachment A: Proposed Section 15.26.030(b), Abandonment of Nonconforming Uses

Attachment B: Top Ten Iowa Cities – Nonconforming Uses

Prepared by: Haley P. Weber, Planner

15.26.030 Nonconforming Uses

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2. **Abandonment of Nonconforming Use.** If any nonconforming use ceases for a continuous period of more than ~~six~~ twelve months, any subsequent use shall conform to the regulations of this title.
3. **Relocation of Nonconforming Use.** No nonconforming use shall be moved in whole or in part to any other location, unless the nonconforming use meets the requirements of this title.
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