



Date May 9, 2022

RESOLUTION HOLDING HEARING ON PROPOSED AMENDMENT TO ZONING ORDINANCE, DES MOINES MUNICIPAL CODE SECTION 134-3.9.2, RELATING TO ACCESSORY HOUSING UNITS (AHUs) AND PERMITTED ZONING DISTRICTS AND REGULATIONS, AND APPROVING SAME

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16, 2019, by Roll Call No. 19-1683, the City Council approved Ordinance No. 15,816 adopting the Zoning Ordinance, which repealed and replaced previous Chapter 134 of the Des Moines Municipal Code and Article 5 of which repealed and replaced the City’s Wireless Telecommunications Facility Policy adopted on April 8, 2019 by Roll Call No. 19-0580, and certain ordinances amending the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 Neighborhood Services Department and Development Services Department and staff have prepared a further amendment to Section 134-3.9.2 of the Zoning Ordinance, which amendment identifies and expands permitted zoning districts that allow Accessory Household Units (AHUs) by right and conditionally; and

WHEREAS, on March 17, 2022, the City Plan and Zoning Commission voted 10-0 to find the proposed amendment in conformance with PlanDSM: Creating Our Tomorrow comprehensive plan and to **APPROVE** the proposed amendment to Section 134-3.9.2 of 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; and

WHEREAS, on April 4, 2022, by Roll Call No. 22-0533, it was duly resolved by the City Council that the proposed amendment to the Zoning Ordinance be set down for public hearing on April 18, 2022 at 5:00 p.m. in the City Council Chambers at City Hall; and

WHEREAS, due notice of said hearing was published in the Des Moines Register, as provided by law, setting forth the time and place for hearing on said proposed amendment to the Zoning Ordinance; and

WHEREAS, on April 18, 2022, by Roll Call No. 22-0636, the City Council opened and continued said hearing to May 9, 2022, at 5:00 pm in the City Council Chambers at City Hall; and

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



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

1. Upon consideration of the facts, statements of interested persons and arguments of counsel, any and all objections to said proposed amendment to Section 134-3.9.2 of the Zoning Ordinance, be and the same are hereby overruled, and the hearing is closed.
2. The City Council hereby makes the following findings in support of the proposed amendment to Section 134-3.9.2 of the Zoning Ordinance:
 - a. Said amendment is necessary to protect and preserve the rights, privileges, and property of the City and of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents, for the reasons stated herein.
 - b. The amendment is further necessary to promote the health, safety, morals, and general welfare of the community.
 - c. Said amendment is consistent with PlanDSM: Creating Our Tomorrow Plan, the comprehensive plan for the City of Des Moines, and meets the multiple goals thereof including but not limited to the following:
 - i. Land Use (LU) Goal 1: Develop new land development regulations consistent with this Comprehensive Plan, include development standards, provide for a mixture of land uses, mandate protection of natural resources, and promote flexible approaches to implementing the Plan.
 - LU1: Develop a new Zoning Ordinance and other land development regulations consistent with the goals and policies of PlanDSM.
 - LU2: Develop regulations sensitive to adjoining development and potential development to promote unique land use objectives including neighborhood centers and transit-oriented development (TOD).
 - LU6: The City of Des Moines will strive to reduce greenhouse gas emissions by encouraging energy efficient buildings, reducing vehicle miles traveled, increasing landscape plantings, and utilizing green infrastructure.
 - ii. Land Use (LU) Goal 2: Direct new growth and redevelopment to areas with existing infrastructure and nodes and corridors based on proximity to transit, shopping, services, and public amenities.
 - LU8: Encourage continued redevelopment and enhancement of regional nodes emphasizing a mix of uses, ease of access by transit, enhanced walkability, and high density residential.
 - LU15: Prioritize development and redevelopment in areas with existing infrastructure and properties included in adopted Urban Renewal Plans.



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- iii. Land Use (LU) Goal 4: Continue to embrace the distinct character of Des Moines' neighborhoods while allowing for new development and redevelopment.
 - LU23: Create opportunities for a mixture of land uses within neighborhoods including mixed use centers, diverse housing products, recreational opportunities, public spaces, and schools.
- iv. Transportation (T) Goal 4: Make transit a more attractive option for all City residents.
 - T18: Increase neighborhood connectivity to transit corridors and bus stops.
 - T22: Encourage higher densities and mixed-use transit oriented development (TOD) to locate on transit corridors.
- v. Housing (H) Goal 1: Provide a diversity of housing options to accommodate residents of all ages, income levels, household sizes, and cultural backgrounds.
 - H1: Ensure an adequate supply of housing through a mix of new development, infill development, and redevelopment of existing properties.
 - H2: Ensure an adequate supply of housing through a mix of new development, infill development, and redevelopment of existing properties.
 - H4: Promote accessible, affordable, and age friendly housing alternatives in all neighborhoods to accommodate persons with disabilities and allow seniors to age in place, in proximity to known services, and with easily accessible quality open space.
 - H5: Address availability and affordability of housing options for all families.
- vi. Housing (H) Goal 2: Preserve, maintain, and improve the existing inventory of single-family and multi-family housing.
 - H15: Evaluate existing occupancy standards, zoning codes, and design standards to remove barriers that impact access, development, and maintenance of safe and affordable housing for all residents.
- vii. Housing (H) Goal 3: Promote sustainable housing development that utilizes existing resources and supports compact, walkable, and bikeable neighborhoods.
 - H17: Encourage the use of existing public infrastructure by focusing housing development on infill, vacant, and under-developed land.
 - H20: Prioritize housing development at an increased density in locations that are close to public transit, shopping, public amenities, schools, and open spaces.



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- viii. Housing (H) Goal 4: Support development of and access to quality housing affordable to all income level households.
 - H21: Ensure availability of rental and owner occupied housing that meets the needs of households with all income levels in the city.
 - H22: Distribute affordable housing broadly throughout the City to avoid concentrations in neighborhoods or one sector of the City.
 - ix. Community Character and Neighborhood (CCN) Goal 1: Embrace the distinct character offered in each of Des Moines' neighborhoods.
 - CCN2: Ensure a diverse mix of housing types, styles, scales, density, and affordability that complement existing neighborhood character.
 - CCN5: Ensure infill development is sensitive to the existing character of the neighborhood.
 - x. Community Character and Neighborhood (CCN) Goal 5: Expand opportunities for healthy and active living for all residents.
 - CCN29: Design and construct infrastructure and the built environment that enables a healthier community that walks, bikes, and is physically active.
3. The proposed amendment to Section 134-3.9.2 of the Zoning Ordinance, in form on file in the office of the City Clerk, is hereby approved, subject to final passage of the enacting ordinance.

MOVED by _____ to adopt.

SECOND by _____.

FORM APPROVED:

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

(ZONG2022-000018)

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

MOTION CARRIED APPROVED

Mayor

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.

City Clerk

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Agricultural Use Category

adequate provision for the collection and disposal of fluids and wastes.

5. Any junk or salvage yard shall provide a paved area for the receipt and temporary storage of material, which is screened from the adjoining public right-of-way.
6. The best practical control technology shall be employed to minimize any obnoxious or offensive odor, dust, smoke, gas, noise, or similar nuisance generated by the proposed use, and the best practical means known shall be employed for the disposal of refuse matter.
7. Any junk or salvage yard requiring a license or permit from the Iowa Department of Natural Resources or similar State agency shall provide proof of valid license or permit, as applicable, to the neighborhood services department prior to commencing such use and following any amendment or renewal to said license or permit.

3.6.5 MINING OR MINERAL PROCESSING

The mining or extraction of mineral or aggregate resources from the ground for off-site use. Examples include quarrying or dredging for sand, gravel or other aggregate materials; mining; and oil or gas.

134-3.7 Agricultural Use Category

3.7.1 COMMUNITY AND URBAN GARDEN

Areas that are managed and maintained by an individual or a group of individuals to grow and harvest food crops or non-food crops (e.g., flowers). A community garden area may be divided into separate garden plots for cultivation by one or more individuals or may be farmed collectively by members of the group. Community gardens are subject to the following supplemental use regulations:

- A. Unless permitted in the subject zoning district or approved as a conditional use, on-site sales of community garden products or other items is prohibited.
- B. All equipment must be stored in a completely enclosed building.
- C. The community garden site must be designed and maintained to prevent any chemical pesticide, fertilizer or other garden waste from draining on to adjacent properties.
- D. On-site trash, recyclable and compost containers must be located and maintained as far as practicable from residential household units located on other lots.

- E. A sign must be posted on the subject property identifying the name and phone number of the property owner or the owner's agent. The sign must be at least four and no more than six square feet in area and be posted so that it is legible from the public right-of-way.
- F. The property must be maintained free of tall weeds and debris. Dead garden plants must be regularly removed.
- G. The perimeter of all community and urban gardens must be fenced.
- H. Gardens that are accessory to a household living use are exempt from this section.
- I. Any animal husbandry shall be in compliance with chapter 18 of this code.

3.7.2 CROP PRODUCTION

An area managed and maintained by an individual, group or business entity to grow crops.

3.7.3 NURSERY OR TRUCK FARM

The propagation and growth of trees or food or non-food crops for wholesale or retail sales and distribution. Does not include on-site retail sales unless such sales are otherwise allowed in the subject zoning district. Typical uses include plant nurseries, the growing of vegetables and non-food crops primarily for local wholesale and retail sales.

134-3.8 Other Use Category

This category includes uses that are not covered, in full or in part, by the previously described use categories of this article.

3.8.1 CONSUMER FIREWORKS SALES

- A. Retail sales of Consumer Fireworks, as defined in chapter 46 of this code, shall be permitted only in those zoning districts where such sales are specifically classified as permitted uses by applicable district regulations.
- B. In each zoning district where retail sales of Consumer Fireworks, as defined in chapter 46 of this code, are classified as a permitted use, such sales shall be permitted only as a principal permitted use and not as an accessory use.
- C. In each zoning district where retail sales of Consumer Fireworks, as defined in chapter 46 of this code, are classified as a permitted use, such sales shall be undertaken in full compliance with chapter 46 of this code.

134-3.9 Accessory Uses

3.9.1 GENERALLY APPLICABLE REGULATIONS

A. Accessory Uses Allowed. Accessory uses are allowed only in connection with lawfully established principal uses.

B. Allowed Uses. Allowed accessory uses are limited to those expressly regulated in this section as well as those that are determined appropriate by the neighborhood services director. In making a determination, the neighborhood services director may consider the following criteria:

1. They are customarily found in conjunction with the principal use of the subject property;
2. They are subordinate and clearly incidental to the principal use of the property; and
3. They serve a necessary function for or contribute to the comfort, safety or convenience of occupants of the principal use and the community.
4. If the proposed allowed accessory use will be located in a "bus shelter or bench for public transit use" as defined and regulated by section 135-2.22.3.K of this code, then said use may be accessory either to a principal use or structure, or accessory to a lot that is vacant and does not contain a principal use or structure.
5. If the proposed allowed accessory use will be located in an "other outdoor automated accessory structure" as defined and regulated by section 135-2.22.3.L of this code, then said accessory use shall be restricted to dispensing only products that are accessory to a retail sales use or financial service use that is permitted in the applicable zoning district of the lot on which said uses are to be located, and shall not dispense alcoholic liquor, wine, beer, or tobacco products.

C. Time of Construction and Establishment.

Accessory uses may be established only after the principal use of the property is in place.

D. Location. Accessory uses must be located on the same lot as the principal use to which they are accessory, unless otherwise expressly stated.

E. Accessory Structures. See section 135-2.22 of this code for regulations governing accessory structures.

F. Connection to a Principal Structure. A structure which might otherwise be considered an accessory building, but which is connected to the principal

structure by a breezeway or other extension of the principal structure containing a functional roof and floor shall, for the purposes of this chapter:

1. Lose its status as an accessory building;
2. Become part of the principal structure; and,
3. Shall be subject to all restrictions applicable to a principal structure.

3.9.2 ACCESSORY HOUSEHOLD UNITS (AHU)

A. Where Allowed.

1. Accessory household units (AHUs) that comply with this section [134-3.9.2](#), and with all other applicable sections of this code, are permitted in the following zoning districts:
 - a. as of right in A, DXR, RX1 and RX2 districts;
 - b. as of right in N and NX districts that allow two, three or four household units on a single lot;
 - c. as of right in N and NX districts, regardless of number of household units on the lot, if the lot is within 0.25 miles of a bus transit route established and used by a public regional transit agency and in accordance with section 134-3.9.2.D.3 of this chapter; and
 - d. in N districts that allow one household unit on a single lot subject to conditional use approval by the board of adjustment pursuant to section 134-6.4 of this chapter.
2. On all lots where AHUs are permitted, an owner of the property shall reside in one of the household units on the property.

B. Number Allowed. No more than one AHU is permitted on a single lot.

C. Location. AHUs may be located internally within the principal dwelling unit or in a detached accessory outbuilding pursuant to section 135-2.22 of this code.

D. Other Regulations.

1. Only one entrance to a house containing an accessory household unit (AHU) may be located on a facade that faces a street.
2. The floor area of an AHU may not exceed 50% of the floor area within the principal household unit.

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3. Lots within N and NX districts upon which AHUs are permitted by right pursuant to section [134-3.9.2.A.1.c](#) are further subject to the following:
 - a. For purposes of measuring compliance with the distance requirement between a lot and a bus transit route, measurements must be taken on a direct line following the shortest distance from the property line of the lot containing the AHU to the nearest bus transit route(s).
 - b. The Neighborhood Services Director shall review and determine compliance with the distance requirement between a lot and a bus transit route prior to issuance of building permit(s) for, and construction of, an AHU.
 - c. An AHU that meets the distance requirement between a lot and a bus transit route at the time of issuance of the building permit(s), and thereafter fails to meet said requirement due to a change in the applicable bus transit route, shall constitute a non-conforming accessory use.

3.9.3 DRIVE-IN AND DRIVE-THROUGH USES

- A. Description.** A use accessory to a principal use that offers service directly to occupants of motor vehicles. Such uses are typically associated with restaurants, banks and pharmacies.
- B. Exceptions.** Automatic teller machine kiosks and similar drop-off or pick-up facilities that do not have on-site employees or amplified sound are not classified as drive-in or drive-through facilities if they meet the criteria for classification as an accessory use.
- C. Structure.** See the accessory structure regulations of section 135-2.22 of this code.

3.9.4 HOME OCCUPATIONS

- A. Description.** Home occupations are business activities or professions conducted wholly or partly within a property as an accessory use to an allowed household living principal use.
- B. General Regulations for All Home Occupations.** All home occupations are subject to the following regulations:
 1. The proposed location, design, construction, and operation of the use adequately safeguards the health, safety, and general welfare of

- persons residing in or working on adjoining or surrounding property.
2. The use must not unduly increase congestion in the streets, or public danger of fire, safety or flooding.
3. The use must not diminish or impair established nearby property values.
4. The use shall be clearly incidental to or secondary to the residential use on the premises.
5. The use shall not cause or produce noise, vibration, smoke, dust, odor, or heat or any other impact of a type or quantity not in keeping with the residential character of the neighborhood.
6. No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted material of a type or quantity not ordinarily used for household purposes shall be used or stored on the premises, and the applicant must identify the proper disposition of any hazardous waste. No activity will be allowed which is hazardous to the public health, safety or welfare.
7. No outside operation, storage or display of materials or products shall occur.
8. No more than 50% of the gross floor area of the building or accessory building shall be used for such business, including the storage of materials or products.
9. No alteration of the residential appearance of the premises shall occur unless allowed by applicable building type and design regulations. This includes external structural alterations or site improvements that change the residential character of the lot upon which a home occupation is located. Examples of such prohibited alterations include the addition of commercial-like exterior lighting or the addition of a separate building entrance that is visible from abutting streets.
10. The home occupation, including any business storage, shall not displace or impede use of parking spaces required by this code. The home occupation shall not displace, interfere with or impede access to public parking.
11. The home occupation shall not cause the congregation of business employees at the site or congestion in the availability of on-street parking.

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12. At least one individual engaged in the home occupation must reside in the household unit in which the home occupation is located as their primary place of residence.
13. The home occupation shall be in effect only for so long as the premises are occupied by the person in business.
14. The home occupation shall comply with all applicable codes including local building codes.
15. The home occupation shall meet all general regulations and all applicable supplemental regulations.

C. Board of Adjustment Reconsideration. Any approved home occupation may be subject to reconsideration by the board of adjustment if at any time the zoning enforcement officer determines that the conduct of the occupation does not comply with one or more general regulations for home occupations or applicable supplemental regulations, or has become detrimental to the neighborhood.

D. Type 1 Home Occupations. The following occupations are allowed by-right, subject to compliance with the regulations found in subsections [B](#) and [D](#) of this section:

1. Those occupations in which household residents use their home as a place of work with no employees, customers or clients coming to the site; and
2. In-home day care facilities for eight or fewer children.

E. Type 2 Home Occupations.

1. The neighborhood services director is authorized to approve Type 2 home occupation uses, as Type 1 zoning exceptions pursuant to section [134-6.5 of this chapter](#), for the following:
 - a. Commercial services as defined by section [134-3.5.6 of this article](#);
 - b. Grooming of household pets as defined by section [134-3.5.2.B of this article](#); and
 - c. Office as defined by section [134-3.5.13 of this article](#).
2. In addition to the general regulations for home occupations, Type 2 home occupations are subject to the following supplemental regulations:
 - a. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to

the home occupation must cease between the hours of 7:00 p.m. and 7:00 a.m.

- b. No more than two clients or customers may be present at any one time on the site of a Type 2 home occupation. Family members of the client or customer shall not be counted towards the two-person limit.
- c. A maximum of one nonresident employee is allowed with a Type 2 home occupation. For the purpose of this provision, the term "nonresident employee" includes an employee, contractor, business partner, co-owner or any other person affiliated with the home occupation who does not live at the site, but who visits the site as part of the home occupation.

F. Type 3 Home Occupations.

1. The board of adjustment is authorized to approve conditional uses for Type 3 home occupation uses, as conditional uses pursuant to section [134-6.4 of this chapter](#), for the following:
 - a. Uses allowed as Type 2 home occupations, subject to the supplemental regulations set forth below;
 - b. Day care as defined by section [134-3.5.7 of this article](#);
 - c. Retail sales as defined by section [134-3.5.15 of this article](#); and
 - d. Fabrication and production, artisan as defined by section [134-3.6.1.A of this article](#).
2. In addition to the general regulations for all home occupations, Type 3 home occupations are subject to the following supplemental use regulations:
 - a. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the home occupation must cease between the hours of 7:00 p.m. and 7:00 a.m.
 - b. No more clients or customers may be present at any one time on the site of a Type 3 home occupation than allowed by board of adjustment approval subject to consideration of the general regulations.
 - c. The board of adjustment shall determine the maximum number of nonresident employees allowed with a Type 3 home occupation. For the purpose of this

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provision, the term “nonresident employee” includes an employee, contractor, business partner, co-owner or any other person affiliated with the home occupation, who does not live at the site, but who visits the site as part of the home occupation.

G. Type 4 Home Occupations.

1. The board of adjustment is authorized to approve conditional uses for Type 4 home occupation uses in the NX2a district for the following:
 - a. Uses allowed as a Type 3 home occupation, subject to the supplemental regulations set forth below;
 - b. Restaurant as defined by section [134-3.5.9.A of this article](#). Restaurants that include the sale of alcoholic liquor, wine, or beer are subject to the regulations found in [Table 134-3.9-1 of this article](#) and section [134-3.8.1 of this article](#); and
 - c. Artisan fabrication and production as defined by section [134-3.6.1.A of this article](#).
2. In addition to the general regulations for all home occupations, Type 4 home occupations are subject to the following supplemental regulations:
 - a. A maximum of one nonresident employee per 250 square feet of gross floor area devoted to the Type 4 home occupation use is allowed.
 - b. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the home occupation must cease between the hours of 10:00 p.m. and 7:00 a.m.
 - c. Outdoor eating for restaurants may be approved for buildings on corners and spaces not abutting another residence.
 - d. Parking lots are allowed in rear yards with a frontage buffer per section 135-7.7 of this code and semi-pervious paving for all drive lanes and spaces. Parking lots are limited to no more than six spaces.

3.9.5 OUTDOOR DINING AND DISPLAY

A. Outdoor Dining. Tables and chairs for patrons of eating and drinking places located outdoors and directly adjacent to the structure containing the associated use.

1. Outdoor dining may be located anywhere on the lot.
2. Outdoor dining may be located on the sidewalk of an adjacent right-of-way of a non-primary street if all of the following requirements are met:
 - a. A sidewalk permit per chapter 102 of this code is approved.
 - b. At least five feet of continuous sidewalk is maintained clear and unobstructed for passing pedestrians.
 - c. No permanent construction is permitted within the right-of-way and all appurtenances shall be removed during the off-season.
 - d. A Type 1 exception may be approved for outdoor dining on a primary street, where no non-primary street is available adjacent to the business and the sidewalk is wide enough to accommodate the above requirements.
3. The maximum size of any outdoor dining shall not exceed the gross floor area of the restaurant interior.

B. Outdoor Display. The outdoor display of merchandise associated with a retail sales use.

1. Outdoor sales displays are permitted anywhere on the lot, but shall not be closer to the right-of-way line than the front building facade.
2. Outdoor sales displays on the same lot as a Fuel Station are limited to within five feet of the building or under the fuel canopy, and the height is limited to no more than five feet.
3. Outdoor sales are restricted to those items or merchandise which are permitted in the district.
4. If associated with a principal use on a corner lot, only a single frontage shall be utilized for accessory outdoor display purposes.
5. Merchandise, displays, and other structures in the front or street-side yards shall be removed and stored indoors during non-business hours.
6. Outdoor sales in the interior side or rear yard shall be fenced or walled. Any outdoor sales yard abutting a street right-of-way shall include a frontage buffer per section 135-7.7 of this code.
7. The gross square footage of an outdoor sales display area shall not exceed the gross square footage of the interior space of the building

containing the associated principal retail sales use on the property.

3.9.6 OUTDOOR STORAGE

Permanent outdoor storage of goods, materials and equipment not typically housed or sold indoors, such as large-scale materials, recreational vehicles and boats when in connection with self-service storage, and building and landscape supplies, but excluding junk and salvage yards.

- A. Outdoor storage is permitted in any I or EX district when associated with an industrial use, in any I district when associated with a self-service storage use, and in any CX district when associated with large format retail use.
- B. Outdoor storage shall be located in the rear or side yard of the lot.
- C. Loose materials shall not be stacked higher than six feet and shall, at a minimum, be stored in a three-sided covered shelter.
- D. Goods, materials and equipment shall not be stacked higher than the height of the perimeter screening.
- E. Materials shall be set back from each lot line a minimum distance as established in, and subject to review pursuant to, chapter 135 of this code.
- F. All outdoor storage areas shall be screened from view of adjacent lots and streets in accordance with, and subject to review pursuant to, chapter 135 of this code.
- G. No person shall park, place, keep or store, or permit the parking or storage of, a stock car, racing car, inoperable or unsafe vehicle, vehicular component parts, or miscellaneous junk and debris on any public or private property unless it shall be in a completely enclosed building. This subsection shall not apply to legitimate businesses operating in a lawful place and manner; provided, however, that such outside areas are screened from public view.

3.9.7 RESIDENTIAL SUPPORT SERVICE

- A. Residential support services are small-scale personal service and retail sales uses that primarily serve the needs of residents of large residential buildings.
- B. Residential support services are allowed in NX3 districts as an accessory use to any principal group living use with more than 50 residents and in apartment buildings containing more than 30 permanent household units.

- C. Residential support services must be located on the ground floor of the same building as the principal residential use and not exceed 25% of the ground floor area of the building.
- D. Residential support services must have internal access from the principal residential building. External entrances are also allowed.

3.9.8 BOARDING AND ROOMING UNITS

- A. The taking of boarders for more than 30 consecutive days or the leasing of rooms for more than 30 consecutive days is allowed as an accessory use to a principal use in the household living use category, provided the total number of boarders and roomers does not exceed two and an owner of the property resides full-time on the property.
- B. The use of a household unit, or part of a household unit, for commercial lodging use, also known as short-term rental use, where lodging is provided for compensation for one or more persons for periods of less than 30 consecutive days, is allowed as an accessory use to a household living principal use.

3.9.9 LIQUOR, WINE AND BEER SALES

- A. **Description.** The retail sale of alcoholic liquor, wine and beer is permitted as a principal use, or as an accessory use to a permitted principal use where determined by the neighborhood services director that said accessory use is customary and incidental to such permitted principal use, only in the zoning districts and subject to the conditions indicated in [Table 134-3.1-1](#) and [Table 134-3.9-1 of this article](#) and pursuant to this section.
- B. **Conditional Use Approval Criteria.** Conditional use approval is required for the use of a premises, either as principal or accessory use, for the sale of alcoholic liquor, wine or beer, under the circumstances identified in [Table 134-3.1-1](#) and [Table 134-3.9-1 of this article](#). The board of adjustment is authorized to grant conditional use approval for such uses only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:
 1. The business conforms with the conditions identified in indicated in [Table 134-3.9-1 of this article](#).
 2. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general

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welfare of persons residing in the adjoining or surrounding residential area.

3. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.
4. The business will not unduly increase congestion on the streets in the adjoining residential area.
5. The operation of the business will not constitute a nuisance.

C. Supplemental Use Regulations.

Any conditional use approval granted by the board of adjustment for the use of a premises, either as principal or accessory use, for the sale of alcoholic liquor, wine and beer is subject to the following supplemental use regulations, together with such additional special conditions as may be reasonably required by the board of adjustment to ensure that the conditional use review approval criteria of paragraph B of this subsection, are satisfied:

1. Any parking area provided for the use of customers of the business must be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site must be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
2. The business shall comply with the noise control regulations of article IV of chapter 42 of this code. Outside speakers and amplified sound is prohibited except when used in compliance with a type E sound permit.
3. Any such business must comply with the following requirements:
 - a. Every limited retail sales establishment, fuel station and tobacco store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either:
 - i. Display alcoholic liquor only in a locked case or behind a counter accessible only to employees;
 - ii. Employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or

- iii. Have more than one employee on duty at all times the business is open to the public.

- b. Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
 - c. Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
 - d. Not dispense alcoholic beverages from a drive-through window.

4. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
5. The conditional use approval is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of the conditional use approval.
6. If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions of the conditional use approval, the zoning enforcement officer may apply to the board of adjustment to reconsider conditional use approval for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board of adjustment finds that the operation of such business exhibits a pattern of violating the conditions of the conditional use, the board shall have the authority to amend or revoke the conditional use approval.

D. Report of Findings. Upon reasonable suspicion that any fuel station, or retail sales establishment, or other uses with sales for on-premise consumption excluding restaurants and bars, derives more than 40% of its gross receipts from the sale of alcoholic liquor, wine, beer or tobacco products, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 40% of its gross receipts from sales are derived from

the sale of alcoholic liquor, wine, beer or tobacco products. In such event it shall be presumed that more than 40% of the gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for fuel station and retail sales establishments, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages, from the sale of tobacco products, and from the sale of all other merchandise and food exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.

E. Report of Findings - Restaurant. Upon reasonable suspicion that any restaurant does not derive at least 50% of its gross receipts from the sale of prepared food and food-related services, the zoning enforcement officer may require that the owner or operator or the restaurant demonstrate within 45 days that during the prior six months at least 50% of its gross receipts were derived from the sale of prepared food and food-related services. In such event it shall be presumed that less than 50% of the restaurant's gross receipts are derived from the sale of prepared food and food-related services, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for restaurants, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages and from the sale of prepared food and food-related services exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.

F. Report of Findings - Tobacco Store. Upon reasonable suspicion that any tobacco store derives more than 25% of its gross receipts from the sale of alcoholic liquor, wine or beer, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 25% of the gross receipts from sales were derived from the sale of alcoholic liquor, wine or beer. In

such event it shall be presumed more than 25% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine or beer, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for tobacco stores, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages, from the sale of tobacco products, and from the sale of all other merchandise and food exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.

G. Prohibited Accounting for Alcoholic Beverages.

The sale of an alcoholic beverage and any of its component ingredients whether mixed into one beverage or sold separately to the same customer, regardless of intent, shall not be divided for accounting purposes under this chapter.

H. Effective Date. All fuel stations, retail sales establishments, tobacco stores and restaurants that have not continuously held an alcoholic liquor license or a beer or wine permit since July 1, 2012, shall comply with the requirements of paragraphs [A.](#), [B.](#), [C.](#), [D.](#), [E.](#), [F.](#), and [G.](#) of this subsection. Any fuel station, retail sales establishment, tobacco store or restaurant which has continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012, shall comply with paragraphs [A.](#), [B.](#), [C.](#), [D.](#), [E.](#), [F.](#), and [G.](#) of this subsection, exclusive of any changed separation requirements, commencing on December 31, 2013, and prior to that date shall continue to be subject to the general regulations regarding nonconforming uses, as set forth in section [134-7.2 of this code](#).

3.9.10 ACCESSORY OFF-SITE PARKING USE

Required off-street parking as an accessory use to a permitted principal non-residential use, occurring off-site in a zoning district where non-accessory parking or the use to be served by the parking are not allowed, as follows:

A. The accessory off-site parking use will be on a lot abutting the permitted principal non-residential use, which abutting lot is connected to the lot containing the permitted principal non-residential use by declaration of zoning lot filed with the county recorder and is owned or controlled by the operator of the permitted principal non-residential use.

134-3. USES

Accessory Uses

- B.** The accessory off-site parking use complies with the planning and design requirements of chapter 135, including approval of the off-site parking lot through the Type 2 design alternative procedures of section 135-9.2 of this code in accordance with section 135-6.6.4.C.3.
- C.** The accessory off-site parking use is intended for customer and employee personal vehicles only. Limited commercial truck parking shall be permitted only for single rear-axle pickups or vans weighing no more than 6,000 pounds (gross vehicle weight rating). No exterior power apparatus is allowed. This will not permit trailers or other equipment storage.
- D.** A directional sign shall be placed in the accessory off-site parking use lot on the boundary line separating the two districts, which shall read "no truck parking behind this point except limited commercial pickups or vans weighing under 6,000 lbs. (G.V.W.R.)" or similar wording.
- E.** A Type 1 zoning exception reviewed and approved in accordance with section [134-6.5.2 of this chapter](#) is required for the accessory off-site parking use.

134-3.USES

Accessory Uses

TABLE 134-3.9-1. ALCOHOLIC LIQUOR, WINE AND BEER SALES

USE	DISTRICTS												
	DX1	DX2	DXR	MX1	MX2	MX3	RX1, RX2	CX, EX, I1	I2	NX2, NX2A	P1, P2	F	
Retail Sales													
Limited													
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	○*	○*	-	-	-	-	
Wine and Beer Sales	-	○*	○*	○*	○*	○*	○*	-	-	-	-		
General													
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-	-
Large													
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-	-
Fuel Station													
Alcoholic Liquor, Wine and Beer Sales	-	-	-	○*	○*	○*	-	○*	○*	-	-	-	
Wine and Beer Sales	-	40%/150	40%/150	-	40%/150	40%/150	-	40%/150	40%/150	-	-	-	-
Liquor Store													
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-	
Wine and Beer Sales	-	○*	○*	○*	○*	○*	○*	○*	-	-	-		
Tobacco Store													
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-	
Wine and Beer Sales	-	○*	○*	○*	○*	○*	○*	○*	-	-	-		
Restaurant, Bar, Other Uses													
Restaurant with Alcoholic Liquor, Wine and Beer Sales	50%	50%	50%	50%	50%/75	50%/75	50%/75	50%/75	50%/75	○*	○*	-	
Bar	○*	○*	○*	-	○*	○*	-	○*	-	-	○*	-	
Other Uses with Alcoholic Liquor, Wine and Beer Sales	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*

KEY: ○=requires conditional use approval | * = supplemental use regulations apply | - = prohibited

Table Notes

○ = Uses identified with a ○ symbol are allowed only if reviewed and approved in accordance with the conditional use procedures of [134-6.4 of this chapter](#).

40% = no more than 40% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.

50% = at least 50% of the gross receipts from sales from the premises must be derived from the sale of prepared food and food-related services. The sale of an alcoholic beverage is not the sale of prepared food and food-related services.

25% = no more than 25% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine or beer.

75 = the licensed premises occupied by such use must be separated by at least 75 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.

150 = the licensed premises occupied by such use must be separated by at least 150 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.

500 = the licensed premises occupied by such use must be separated by at least 500 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.

1320 = the licensed premises occupied by such use must be separated by at least 1320 feet from the property line of the lot where any limited retail sales, fuel stations, liquor stores and tobacco stores engaged in the sale of alcoholic liquor is located.

City of Des Moines

Planning and Design

CHAPTER 135

INCLUDES:

- Ordinance No. 15,817 dated 10/16/19 - Chapter 135
- Ordinance No. 15,845 dated 12/16/19 - Amendments
- Ordinance No. 15,962 dated 12/21/20 - Amendments
- Ordinance No. 16,026 dated 06/28/21 - Amendments
- Ordinance No. 16,077 dated 11/15/21 - Amendments
- Ordinance No. 16,094 dated 12/20/21 - Amendments
- Ordinance No. 16,106 dated 03/02/22 - Amendments
- Ordinance No. _____ dated _____ - Amendments



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135-2. BUILDING TYPES

Accessory Structures

TABLE 135-2.22-1. ACCESSORY STRUCTURE TABLE

CATEGORY	DISTRICTS																			Reference		
	A	DX1	DX2	DXR	MX1	MX2	MX3	RX1	RX2	CX	EX	I1	I2	N1, N2, N3, N4	N5	NX1	NX2, NX2a	NX3	NM		P1	P2
ACCESSORY BUILDINGS																						
Construction Structures	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.2
Kiosk	-	-	-	-	-	-	-	-	-	●*	●*	-	-	-	-	-	-	-	-	●*	●*	135-2.22.2
Outbuilding and Detached Garages	●*	-	-	-	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.2
Parking Structure	-	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	-	-	-	-	-	-	-	●*	135-2.22.2
Temporary Building	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.2
Accessory Household Unit	●*	-	-	●*	-	-	-	●*	●*	-	-	-	-	●*	●*	●*	●*	●*	-	-	-	135-2.22.2
Seasonal Building	-	-	-	-	●*	●*	●*	-	-	●*	●*	●*	●*	-	-	-	-	-	-	●*	●*	135-2.22.2
ACCESSORY OUTDOOR PAVING & STRUCTURES																						
Ball Court	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.3
Deck & Patio	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.3
Dog Run	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	-	-	-	●*	●*	●*	●*	●*	135-2.22.3
Drive-Through Facility	-	-	-	-	-	-	●*	-	-	●*	●*	●*	-	-	-	-	-	-	-	-	●*	135-2.22.3
Flag Pole	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.3
Fuel Station	-	-	●*	●*	-	●*	●*	-	-	●*	●*	●*	●*	-	-	-	-	-	-	-	-	135-2.22.3
Gazebo	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.3
Landscape Feature	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.3
Temporary Storage Container	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.3
Scoreboard	-	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	-	-	-	-	-	-	-	●*	135-2.22.3
Bus Shelter or Bench for Public Transit Agency	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.3
Outdoor Automated Accessory Structures	-	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	-	-	-	-	-	-	-	-	-	135-2.22.3
ACCESSORY UTILITY STRUCTURES																						
Antenna & Satellite Dish	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.4
EV Charging Stations	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.4
Mechanical Equipment	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.4
Rainwater Collection/ Cisterns	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.4
Solar - Building-mounted	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.4
Solar - Freestanding	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.4
Wind - Roof-mounted	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	135-2.22.4
Wind - Freestanding	●*	-	-	-	-	-	-	-	-	-	●*	●*	●*	-	-	-	-	-	-	-	●*	135-2.22.4

KEY: ●*=permitted with development standards | - =prohibited

135-2. BUILDING TYPES

Accessory Structures

B. Kiosk. An accessory building with limited space for the proprietor and associated goods and no space for customers to enter the structure, with the exception of bathrooms.

1. Yard. Permitted in all yards.
2. Use. A kiosk may house consumer goods, restaurant including a coffee shop, sandwich shop, or personal service.
3. Area. Maximum of 500 square feet floor area.
4. Height. Maximum of one story or 15 feet.
5. Facade Requirements. A kiosk shall fulfill the following facade requirements:
 - a. Front and corner facades shall have a minimum transparency of 20% pursuant to section [135-3.8 of this chapter](#).
 - b. The kiosk shall be oriented toward the front of corner lot line. The primary sales or service windows or principal entrance shall be located on the front or corner facade.
6. Roof Type. Pitched roof type is required.
7. Permanent Structure. No wheels, hitch, or chassis shall be located on a kiosk.
8. Materials. Permitted materials include durable, natural materials, such as stone, brick, stucco, metal, concrete, and painted or stained wood.

C. Outbuilding and Detached Garage. A fully enclosed building on a lot that is detached from the principal structure on the same lot. A principal structure is required, unless otherwise stated. Typical outbuildings include detached garages, pool houses, workshops, barns, or sheds.

1. Side and Rear Setback. Minimum side and rear setback of an outbuilding shall be five feet.
2. Alley. Where a garage is accessed off an alley with pavement narrower than 20 feet, the garage shall be set back from the alley lot line to allow 24 feet from the opposite edge of alley pavement to the garage door.
3. Height. The maximum height of the outbuilding may be generally no taller than one-half story less than the principal building; however, in the event that the principal building is one story in height, the outbuilding may not exceed the height of the principal building.
4. Residential Districts. The lot coverage of all accessory structures, including an outbuilding, shall not exceed 576 square feet or 25% of the

rear yard, whichever is greater, on a lot zoned Neighborhood (N) or Neighborhood Mix (NX).

5. Character. The outbuilding shall be compatible in color and character with the primary structure on the lot.
6. Accessory Household Unit. If a permitted AHU is contained within an outbuilding, then the requirements of subsections 4, 5, and 8 of section [135-2.22.2.F of this article](#) shall also apply.

D. Parking Structure. A stand-alone accessory structure for decked, multi-level parking. A parking structure is not necessarily fully enclosed.

1. Location. An accessory parking structure shall be located as follows:
 - a. Parking structures shall be located in the rear yard only and shall be screened from view from the front of the lot or any primary street by the principal building.
 - b. Parking structures may be located in the center of a double frontage lot, screened from all primary streets by buildings.
2. Design. See section [135-2.17.3 of this article](#) for regulations for parking structure street frontages.

E. Temporary Building. A temporary structure typically associated with a temporary event, such as a circus or temporary sale.

1. Yard. Permitted in all yards.
2. Requires a temporary use approval in accordance with chapter 134 of this code.
3. Temporary buildings associated with a temporary event shall be removed within 24 hours of the close of the event.
4. Wheels and chassis shall be screened by skirting.
5. Tents are considered a type of Temporary Building.
6. Height shall not exceed that of the permitted building type(s) pursuant to section [135-2.3 of this article](#) through section [135-2.17 of this article](#).

F. Accessory Household Unit (AHU) Building. A stand-alone accessory structure for a permitted accessory household unit(s) use.

1. Location. AHU buildings must be located in the rear yard.

Neighborhood Fairmont Park Association

From The Desk of Jeff Witte FPNA President

May 6th, 2022

City Council members;

I am writing this letter on regards to May 9th City council meeting Item 56 municipal code 134-3.9.2 (AHU) Accessory Housing Units and changes to new regulations for neighborhoods. Under these new regulations there is an as a right in the where allowed in section one of this ordinance part A, B, and C should be eliminated and replaced with conditional use. With conditional use the neighbors would have a right to voice their opinion. If the reading stays status quo the board of adjustments would have no jurisdiction over these properties. This ordinance does not address or require off road parking for exterior units. Under AHU requirements you do not have to provide for storage for bikes, grills, garbage totes, ect. When Habitat builds a home they are required to have at least a shed for storage. Since this was brought up at the April 18th council meeting I have had numerous residents tell me that they would not one of these units next to them. How many of the city council would be extremely happy to have one next door to you? The majority of the residents I have talked with does not want this ordinance as written. I ask you to vote no on this ordinance as written.

Thank You

Jeff Witte

President

A handwritten signature in black ink, appearing to read 'Jeff Witte', is written over a horizontal line. The signature is fluid and cursive.